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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
8

9 AMERIPRIDE SERVICES, INC.,  
10 A Delaware corporation,

11 Plaintiff,

12 v.

NO. CIV. S-00-113 LKK/JFM

13 VALLEY INDUSTRIAL SERVICE,  
14 INC., a former California  
corporation, et al.,

15 Defendants.

12 PRETRIAL CONFERENCE ORDER  
13 [TENTATIVE]

15 \_\_\_\_\_/  
16 AND CONSOLIDATED ACTION AND  
17 CROSS- AND COUNTER-CLAIMS.  
18 \_\_\_\_\_/

18 Pursuant to court order, a Pretrial Conference was held in  
19 Chambers on October 3, 2011. PHILIP C. HUNSUCKER, LEE N. SMITH and  
20 MARC A. SHAPP appeared as counsel for plaintiff; FRED M. BLUM,  
21 ERIN K. POPPLER and RONALD S. BUSHNER appeared as counsel for  
22 defendants. After hearing, the court makes the following findings  
23 and orders:

24 This matter arises out of the contamination of the soil and  
25 groundwater at 7620 Wilbur Way in Sacramento, California.  
26 Plaintiff AmeriPride Services, Inc., the current owner and operator

1 of the site (an industrial laundry facility), brings claims against  
2 Valley Industrial Services, Inc., and Texas Eastern Overseas, Inc.,  
3 under the federal Comprehensive Environmental Response,  
4 Compensation and Liability Act of 1980 ("CERCLA"), for cost  
5 recovery, contribution, and declaratory relief. Texas Eastern  
6 Overseas, Inc., brings a counterclaim against AmeriPride for  
7 contribution under CERCLA as well.

8 **I. JURISDICTION/VENUE**

9 Jurisdiction is predicated upon 28 U.S.C. § 1331. Venue is  
10 predicated upon 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613 (b).

11 **II. JURY/NON-JURY**

12 The parties agree that trial will be by the court and not by  
13 a jury.

14 **III. UNDISPUTED FACTS**

15 1. AmeriPride is a Delaware corporation authorized to  
16 do business in California.

17 2. Defendant Valley Industrial Services, Inc. ("VIS,  
18 Inc.") was incorporated in 1972 and was duly organized and  
19 existed under the laws of the State of California.

20 3. TEO is a dissolved Delaware corporation.

21 4. TEO dissolved in 1992.

22 5. TEO has capacity to be sued under 8 Delaware Code  
23 Section 279. The Delaware Chancery Court ordered appointment  
24 of a receiver on November 30, 2009, as affirmed by the Delaware  
25 Supreme Court on June 24, 2010. TEO has no assets other than  
26 potential rights under certain insurance policies.

1       6.    VIS, Inc. was a wholly owned subsidiary of Petrolane,  
2 Inc. ("Petrolane").

3       7.    In 1972, all of the stock of VIS, Inc. was sold to  
4 Petrolane which continued to operate the corporation as a  
5 wholly-owned subsidiary.

6       8.    After Petrolane purchased VIS, Inc. and the Facility,  
7 it was the sole owner of all the shares of stock of VIS, Inc.  
8 during the time VIS, Inc. operated the Facility.

9       9.    In 1983, Petrolane sold the property and Facility to  
10 Mission Linen. Petrolane approved the sale to Mission Linen  
11 and was a signatory to the sale agreement. Petrolane received  
12 the first installment of the purchase price for VIS, Inc. in  
13 the amount of \$1 million.

14       10.   VIS, Inc. merged into Automotive Repairs, Inc., a  
15 California corporation, in 1990, and then Automotive Repairs,  
16 Inc. merged into TEO, a Delaware corporation.

17       11.   TEO is the successor to VIS, Inc. by way of the  
18 mergers discussed in Undisputed Fact 10.

19       12.   TEO admitted it is the successor by merger to VIS,  
20 Inc.

21       13.   VIS, Inc. was merged into corporations which  
22 eventually merged into TEO.

23       14.   By operation of the merger agreements between VIS,  
24 Inc. and Automotive Repairs and Automotive Repairs and TEO, TEO  
25 has expressly assumed VIS, Inc.'s liabilities.

26       15.   VIS, Inc. conducted industrial dry cleaning and

1 laundry washing operations at the property located at 7620  
2 Wilbur Way in Sacramento, California (the "Facility") for a  
3 period of 17 years.

4 16. The Facility is a "facility" as that term is defined  
5 by CERCLA Section 101(9), 42 U.S.C. § 9609(9).

6 17. AmeriPride is the current owner and operator of the  
7 Facility.

8 18. AmeriPride conducts industrial laundry washing  
9 operations at the Facility.

10 19. In 1983, VIS, Inc. sold the Facility to Mission  
11 Linen.

12 20. Mission Linen then immediately sold the Facility to  
13 Welch's Overall Cleaning Company, Inc. ("Welch's").

14 21. Welch's operated the Facility until December 31,  
15 1998, at which time Welch's was merged into AmeriPride, its  
16 parent company.

17 22. Dry cleaning operations at the Facility stopped prior  
18 to 1983.

19 23. Dry cleaning equipment was locked in a room at the  
20 Facility until sometime after AmeriPride purchased the  
21 Facility.

22 24. PCE is a listed "Hazardous Substance" under CERCLA.  
23 42 U.S.C. Section 9601(14) and 40 C.F.R. Section 302.4.

24 25. Testing has revealed the presence of PCE in the soil  
25 and groundwater at and near the Facility.

26 26. PCE has been detected in the groundwater at the

1 Facility in concentrations as great as 11,000 parts per  
2 billion.

3 27. In 2001, Huhtamaki Foodservices, Inc.'s ("Huhtamaki")  
4 production well Chinet #2 contained a concentration of 14 parts  
5 per billion PCE.

6 28. The RWQCB determined that the Facility was a source  
7 of the PCE discovered in both of Huhtamaki's production wells.

8 29. In 2001, PCE was detected in groundwater at a  
9 concentration of 78 parts per billion in the Cal-Am Water Co.  
10 Wilbur #1 municipal supply well in the vicinity of the  
11 Facility.

12 30. The RWQCB determined that the Facility was a source  
13 of the PCE discovered in the Cal-Am Water Co. well.

14 31. Cal-Am Water Co. discontinued use of the Wilbur #2  
15 well, located approximately 500 feet south of the Site, in  
16 December 2001 due to the proximity to the PCE plume.

17 32. The level of PCE in the groundwater at the Facility  
18 exceeds the federal and state mandated drinking water maximum  
19 contaminant level ("MCL") of 5 parts per billion.

20 33. The primary chemical of concern at the site is PCE.  
21 PCE degradation products are also detected in site media,  
22 including trichloroethene (TCE), cis- and  
23 trans-1,2-dichloroethene (c- and t-1,2-DCE), 1,1-dichloroethene  
24 (1,1-DCE), and vinyl chloride (VC). Degradation products of  
25 PCE are also referred to herein as "daughter products" or  
26 "daughter compounds."

1        34. cis-1, 2 DCE, TCE and vinyl chloride can be created  
2 when PCE degrades in the environment.

3        35. Breakdown products of PCE, including TCE,  
4 cis-1,2-DCE, and 1,1-DCE, also have been detected in the  
5 groundwater at and near the Facility ("the Site").

6        36. In groundwater, PCE has been detected at the highest  
7 concentrations and is the most widespread chemical of concern  
8 detected at the Site.

9        37. In addition to PCE and its breakdown products, other  
10 chemicals that are not listed as chemicals of concern in any  
11 of the Cleanup and Abatement Orders listed in Undisputed Fact  
12 83 have been detected in samples from Gore Sorbers, soil vapor,  
13 soil or groundwater collected at the Site.

14        38. In its undissolved form (a separate phase liquid),  
15 PCE is denser than water and is referred to as a DNAPL.

16        39. PCE is a volatile organic compound or "VOC."

17        40. PCE is heavier than water.

18        41. When dissolved in water, PCE is referred to as  
19 aqueous phase PCE or "dissolved PCE."

20        42. DNAPL contamination can create dissolved PCE  
21 contamination. Dissolved PCE contamination cannot create DNAPL  
22 contamination.

23        43. When DNAPL PCE is in equilibrium with water, the PCE  
24 dissolves from the DNAPL PCE into the water until approximately  
25 0.015% of the solution is PCE. This is equivalent to a PCE  
26 concentration of 150,000 parts per billion.

1        44. The soils residing above the saturated zone are  
2 referred to as the "vadose zone." The vadose zone extends from  
3 the ground surface to approximately 70 to 75 feet below ground  
4 surface. Groundwater at the Site is approximately 70 to 75  
5 feet below ground surface.

6        45. When pure PCE is released into the subsurface, it  
7 behaves as a "Dense Nonaqueous Phase Liquid" (DNAPL).

8        46. PCE DNAPL tends to migrate downward in the subsurface  
9 as long as sufficient DNAPL has been released to maintain a  
10 driving force and the soil is permeable enough. Low  
11 permeability layers and the water table can both cause PCE to  
12 migrate laterally instead of downward. If PCE is released to  
13 the subsurface, it can spread to a point where it no longer  
14 migrates due to the capacity of the soil/aquifer in the area  
15 to hold the PCE in pore spaces. PCE that has reached this  
16 residual saturation state and is no longer capable of migrating  
17 is referred to as "residual DNAPL." PCE that has not reached  
18 residual saturation and is capable of further migration is  
19 referred to as mobile DNAPL. Depending on site conditions and  
20 the amount of PCE released, DNAPL PCE can remain stuck in the  
21 vadose zone without reaching the water table, or alternatively  
22 can migrate to and below the water table.

23        47. Above the water table there is a certain amount of  
24 soil moisture related to infiltration of water from above and  
25 a certain amount is in the pore spaces, called "pore water."

26        48. There is residual PCE in the vadose zone from spills



1 during dry cleaning operations during VIS, Inc.'s ownership of  
2 the Facility.

3 49. When soil vapor from residual DNAPL PCE hits the pore  
4 water, the residual PCE may contaminate the pore water or the  
5 water can infiltrate through the original contamination and  
6 leach the chemicals.

7 50. When the water comes in contact with the residual  
8 PCE, or soil gas containing PCE, it can cause some of the PCE  
9 to leach into the water.

10 51. PCE that is released to the subsurface can partition  
11 into three phases. PCE can sorb onto soil, exist in soil gas,  
12 and dissolve in water. With the exception of soil vapor, these  
13 same phases can occur below the water table. PCE in the vadose  
14 zone can migrate to groundwater as DNAPL, in the vapor phase,  
15 and/or as a dissolved phase in groundwater.

16 52. During the time VIS, Inc. owned and operated the  
17 Facility, it used DNAPL PCE as a solvent for its dry cleaning  
18 operations.

19 53. PCE entered the environment during the VIS, Inc.  
20 years of ownership and operation of the Facility.

21 54. There were "releases within the meaning of Section  
22 101(22) of CERCLA, 42 U.S.C. Section 9601(22), of Hazardous  
23 Substances at the Site."

24 55. During VIS, Inc.'s operation of the Facility, any  
25 DNAPL PCE releases initially occurred to the ground.

26 56. Releases of DNAPL PCE to the floor can reach the



1 environment thorough cracks in the concrete, the porosity of  
2 paved surfaces and spaces from the way equipment is anchored  
3 to the ground.

4 57. At least one of the TEO releases listed on Table 8  
5 of the Warner Expert Report (Dkt. 707-10 at 16) got PCE into  
6 the subsurface.

7 58. In 1980 or 1981, a pipe broke while a storage tank  
8 for DNAPL PCE was being moved.

9 59. An overfill of a PCE storage tank occurred in the  
10 late 1970s when a delivery truck driver left the pump running  
11 while filling the PCE storage tank causing a DNAPL PCE to spill  
12 across the floor and into a nearby canal.

13 60. A boil-over in the late 1970s occurred, resulting in  
14 PCE being released.

15 61. An approximately 20 gallon accidental overflow of PCE  
16 occurred between 1976 and 1981 when the operators forgot to  
17 turn off the pump.

18 62. PCE releases from machine imbalances between 1979 and  
19 1980 could have reached the subsurface.

20 63. PCE is highly volatile and thus readily partitions  
21 (evaporates) into aboveground air and subsurface soil vapor.

22 64. Even if DNAPL PCE does not make its way all the way  
23 to groundwater, there can be groundwater contamination as a  
24 result of PCE vapors transported to the water table and water  
25 that infiltrates through spill zones can carry chemicals down  
26 to the water table.

1        65. Dissolved PCE has been detected in AmeriPride's  
2 wastewater.

3        66. The wash aisle trench was extended after AmeriPride  
4 purchased the Facility.

5        67. During AmeriPride's ownership and operation of the  
6 Facility, a wastewater sump overflowed a couple of times.

7        68. The sump outside the Facility that handles waste  
8 water at the Facility is constructed with approximately 6  
9 inches of concrete.

10       69. During AmeriPride's ownership and operation of the  
11 Facility, pipes removed by AmeriPride leaked PCE-contaminated  
12 wastewater into the soil and groundwater and this contamination  
13 was a cause of the contamination on the Huhtamaki property.

14       70. Releases of PCE and other hazardous substances to the  
15 subsurface have occurred before and after AmeriPride's  
16 acquisition of the Facility in June 1983, resulting in some  
17 overlapping areas of contamination with the same chemicals.

18       71. Both DNAPL PCE and wastewater with dissolved PCE have  
19 been released to the subsurface.

20       72. Wastewater releases from laundry operations since  
21 1983 physically overlap some of the areas where PCE DNAPL may  
22 have been previously released.

23       73. AmeriPride and VIS, Inc. received and processed  
24 laundry from customers that from time to time was contaminated  
25 with PCE and other chemicals that are not listed as chemicals  
26 of concern in any of the Cleanup and Abatement Orders listed

1 in Undisputed Fact 83.

2 74. During a remodel of the Facility in March 1997,  
3 AmeriPride's environmental consultant performed an  
4 investigation of the soil at the Facility and ultimately found  
5 evidence of PCE in the soil under the Facility.

6 75. In 1997, AmeriPride reported the PCE contamination  
7 by telephone call to regulatory authorities, namely the  
8 Sacramento County Department of Environmental Management  
9 ("SCDEM").

10 76. As directed by SCDEM, AmeriPride conducted additional  
11 soil sampling and installed monitoring wells from 1997 through  
12 2002.

13 77. During the course of the investigation, AmeriPride  
14 discovered that in addition to PCE in the soil beneath the  
15 buildings at the Facility, PCE, PCE breakdown products and  
16 other chemicals that are not listed as chemicals of concern in  
17 any of the Cleanup and Abatement Orders listed in Undisputed  
18 Fact 83 were present in the groundwater beneath the Facility.

19 78. AmeriPride's investigation concluded that PCE  
20 typically used in dry cleaning operations was in the soil and  
21 groundwater at and near the Facility.

22 79. In 2001, PCE also was detected in a production well  
23 at the neighboring Huhtamaki facility.

24 80. Also in 2001, PCE was detected in a municipal well  
25 near the Facility (Wilbur #1).

26 81. As a result of PCE detected in a municipal well near

1 the Facility (Wilbur #1) owned by Citizens Utilities Company  
2 in 2001, at least one of these wells was consequently shut  
3 down.

4 82. The California Regional Water Quality Control Board,  
5 Central Valley Region ("RWQCB") took regulatory control over  
6 the site investigation in 2002.

7 83. During the course of its oversight of the  
8 investigation and remediation of the PCE at and near the  
9 Facility, the RWQCB issued Cleanup and Abatement Orders ("CAO")  
10 R5-2003-0059; R5-2005-0721; R5-2006-0530; R5-2007-0723; and  
11 amended R5-2009-0702 to both AmeriPride and VIS, Inc.

12 84. Each of the CAOs listed in Undisputed Fact 83, lists  
13 VIS, Inc. as a "discharger."

14 85. TEO's counsel, John Poulos, was copied on each of the  
15 CAOs listed in Undisputed Fact 83 at the same time they were  
16 transmitted to AmeriPride.

17 86. Under the direction of the RWQCB, AmeriPride has  
18 performed investigation and remediation of the PCE in soil and  
19 groundwater at and near the Facility.

20 87. TEO has not performed any work to address the PCE and  
21 its breakdown products in the soil and groundwater at and near  
22 the Facility.

23 88. TEO admits it has not paid any money toward the  
24 remediation of the DNAPL PCE released by VIS, Inc.

25 89. A Soil Vapor Extraction ("SVE") system has been  
26 operating at the Site since 2003.

1       90. The cleanup of the Site is ongoing, as the work  
2 directed by the RWQCB has not been completed. As such,  
3 additional response costs will be incurred.

4       91. As a result of a settlement with AmeriPride,  
5 California-American Water Company ("Cal-Am Water Co.") was paid  
6 \$2 million.

7       92. As a result of a settlement with AmeriPride,  
8 Huhtamaki was paid \$8,250,000.

9       93. As a result of a settlement with Chromalloy,  
10 AmeriPride was paid \$500,000. As a result of its settlement  
11 with Petrolane, AmeriPride was paid \$2.75 million.

12       94. On July 2, 2007 this Court entered an order approving  
13 the three settlements agreements between Chromalloy and  
14 AmeriPride, Petrolane and AmeriPride, and Huhtamaki and  
15 AmeriPride settlement agreements as good faith settlements.

16       95. The Court's July 2, 2007 order approved the  
17 settlements between Chromalloy and AmeriPride, AmeriPride and  
18 Petrolane and AmeriPride and Huhtamaki. The order approving  
19 these settlements states, "Section 6 of the Uniform Comparative  
20 Fault Act ("UCFA"), 12 U.L.A. 147 (1996) in pertinent part, is  
21 hereby adopted as the federal common law in this case for the  
22 purpose of determining the legal effect of the settlement  
23 agreements."

24       96. AmeriPride, as the current owner and operator of the  
25 Facility, has been required by the RWQCB, an agency of the  
26 State of California, to address the PCE and its breakdown

1 products in the soil and groundwater at and near the Facility.

2 97. VIS, Inc. and AmeriPride were both issued a CAO by  
3 the RWQCB due to PCE releases.

4 98. Whether or not AmeriPride was required by the RWQCB's  
5 CAO No. R5-2003-0059 to provide replacement water for Cal-Am  
6 Water Co. due to PCE released from the Facility? (AmeriPride's  
7 Position: TEO admitted this fact in its answer to AmeriPride's  
8 4th Amended Complaint. (Dkt. 756 50 at 7; Dkt. 698-7 14, Ex.  
9 H 2-5 at 7-8; Dkt. 735 at 23; Dkt. 715 73.) TEO's Position:  
10 CAO No. R5-2003-0059 required AmeriPride and VIS, Inc. to  
11 submit a work plan, not to provide Cal-Am with replacement  
12 water. The CAO left the remedy open to the parties to  
13 determine. ("By 20 June 2003 submit a work plan to provide an  
14 interim alternate supply to replace in-kind the supplies lost  
15 from Wilbur #1 and Wilbur #2, municipal water supply wells, and  
16 Chinnet #1 and Chinnet #2 water supply wells for the Huhtamaki  
17 facility, in coordination with the wells' owners/operators. The  
18 interim water supply replacement shall be in effect during the  
19 time required to develop a permanent alternate supply unless  
20 a permanent alternate supply is provided in the short term. The  
21 work plan shall include a schedule, detailed proposals and a  
22 commitment by the Discharger to implement the work plan,  
23 including any necessary agreements or permits. If-any proposed  
24 interim action requires Department of Health Services approval  
25 prior to implementation, the work plan shall demonstrate that  
26 the action will comply with Department of Health Services



1 requirements and that the Discharger has discussed and  
2 coordinated the proposal with Department of Health Services,  
3 Cal Am and Huhtamaki personnel." (Pg 7, pp2). AmeriPride  
4 choose the remedy that it provided. Not the Board.) At the  
5 pretrial conference hearing held on October 7, 2011, the court  
6 determined that, based on the record, this fact is undisputed.  
7 See Hr'g Tr., ECF No. 775, at 19.

8 99. Whether or not despite this relatively low solubility  
9 in water, the concentrations of dissolved PCE in water are  
10 significant when compared to the maximum contaminant level or  
11 "MCL" of 5 parts per billion? (AmeriPride's Position: TEO  
12 admitted this fact in its answer to AmeriPride's 4th Amended  
13 Complaint. (Dkt. 756 12 at 3; Dkt. 715 16.) TEO's Position:  
14 The objective numbers are not in dispute, but AmeriPride's  
15 characterizations are inaccurate and not appropriate. The  
16 meaning of "this relatively low solubility" is vague. Further,  
17 this is a generalization which cannot be extrapolated to apply  
18 to all areas of the Site because Site conditions vary.) At the  
19 pretrial conference hearing held on October 7, 2011, the court  
20 determined that, based on the record, this fact is undisputed.  
21 See Hr'g Tr., ECF No. 775, at 26.

22 100. Whether or not DNAPL PCE may act as long-term sources  
23 of groundwater contamination if they are in the vadose zone?  
24 (AmeriPride's Position: TEO already admitted this fact in its  
25 answer to AmeriPride's 4th Amended Complaint. (Dkt. 756 30  
26 at 5; Warner Depo. at 135:15-24, 147:7-16.) Mr. Warner, TEO's

1 expert, testified the presence of DNAPL PCE in the vadose zone  
2 at this Site had been a source of PCE in groundwater as a  
3 result of leaching and vapor transport:

4 Q. Okay. If the - if the DNAPL didn't make its way all  
5 the way to groundwater, why is there a groundwater  
6 contamination?

7 A. Well, vapors can be transported to the water table and  
8 can contaminate groundwater. That's pretty well  
9 established. And water that infiltrates through spill  
10 zones can carry chemicals down to the water table.

11 Q. Do you think that process is happening at the - at our  
12 site?

13 A. Yes.

14 (Warner Depo. 135:15-24, emphasis added.) TEO's Position:  
15 Whether or not this occurs depends on numerous site conditions,  
16 such as the amount of PCE released, the depth to groundwater,  
17 the soil conditions and the presence of a source of water.  
18 Simply because it may occur does not mean it is occurring at  
19 the Site.) At the pretrial conference hearing held on October  
20 7, 2011, the court determined, and the parties agreed, that  
21 this fact is undisputed. See Hr'g Tr. ECF No. 795 at 27.

22 101. Whether, on at least one delivery, a Van Waters'  
23 employee while transferring PCE to the storage tank allowed PCE  
24 to be released to the soil and into the groundwater at the  
25 Site. The release(s) of PCE have resulted in contamination of  
26 the Environment, including the soil and groundwater at and

1 around the Site, with PCE? (AmeriPride's Position: TEO  
2 admitted this fact in its answer to AmeriPride's 4th Amended  
3 Complaint. (Dkt. 756 20 at 3-4. See also Dkt. 697 24.) The  
4 Court determined in its May 12, 2011 summary judgment order  
5 that this release was undisputed and was not cleaned up. (Dkt.  
6 735 at 10.) TEO's Position: TEO admitted there was a PCE  
7 spill. TEO has not and does not admit that this PCE spill  
8 resulted in PCE contamination of the soil and/or groundwater  
9 at and around the Site.) At the pretrial conference hearing  
10 held on October 7, 2011, the court determined that, based on  
11 the record, this fact is undisputed. See Hr'g Tr., ECF No.  
12 775, at 31.

13 102. Whether or not TEO is a "covered person" under  
14 CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2)? (AmeriPride's  
15 Position: TEO already admitted this fact in its answer to  
16 AmeriPride's 4th Amended Complaint. (Dkt. 756 56 at 8.)  
17 Furthermore, the Court's May 12, 2011 order ("Summary  
18 Adjudication Order"), held that: "TEO is a type of person  
19 potentially subject to liability, as TEO owned the facility at  
20 the time the PCE was disposed of. 42 U.S.C. §§ 9607(a)(2),  
21 9601(21) (corporations are persons for purposes of CERCLA),  
22 9601(29) ('disposal' includes 'spilling')." (Dkt. 735 at 25.)  
23 TEO's Position: This is duplicative of other disputed facts.)  
24 At the pretrial conference hearing held on October 7, 2011, the  
25 court determined, and the parties agreed, that the fact is  
26 undisputed. See Hr'g Tr., ECF No. 775, at 8.

1           103. Whether or not VIS, Inc. has no separate existence  
2 from TEO, because TEO is a successor. (AmeriPride's Position:  
3 TEO already has admitted this fact. (Dkt. 735 at 9; Dkt. 756  
4 3 at 2; Dkt. 715 30. See also Dkt. 677 at 4:8-10 and Dkt. 663  
5 at 6:20-23.) TEO's Position: This is duplicative of other  
6 disputed facts.) At the pretrial conference hearing held on  
7 October 7, 2011, the court determined, and the parties agreed,  
8 that the fact is undisputed. See Hr'g Tr., ECF No. 775, at 9.

9           104. Whether or not VIS, Inc. was a "person who at the  
10 time of disposal of any hazardous substances owned or operated  
11 [a] facility at which such hazardous substances were disposed  
12 of." 42 U.S.C. § 9607(a)(2)? (AmeriPride's Position: TEO  
13 already admitted this fact in its answer to AmeriPride's 4th  
14 Amended Complaint. (Dkt. 756 58 at 8. See also Warner Expert  
15 Report, Table 8, Dkt. 707-10 at 16; TEO Depo. at 71:16-25.)  
16 TEO's Position: At the time the CAO was issued, VIS, Inc.  
17 had previously merged and had ceased to exist.) At the  
18 pretrial conference hearing held on October 7, 2011, the court  
19 determined, and the parties agreed, that the fact is  
20 undisputed. See Hr'g Tr., ECF No. 775, at 10.

21           105. Whether or not the RWQCB has a reputation as being  
22 a tough regulator? (AmeriPride's Position: This fact is  
23 relevant to the Gore Factor used in CERCLA Section 113(f) for  
24 "cooperation with regulators." Bell Petroleum Services, Inc.  
25 v. Sequa Corp., 3 F. 3d 889, 899-900 (5th Cir.1993) and  
26 Centerior Service Co. v. Acme Scrap Iron & Metal Corp., 153

1 F. 3d 344, 354 (6th Cir. 1998). See also United States v.  
2 Newmont USA Ltd., No. CV-05-020-JLQ, 2008 WL 4621566 at \*58  
3 (E.D. Wash. Oct. 17, 2008). The "Gore Factors" are: (1) the  
4 parties' ability to demonstrate that their contribution to  
5 discharge, release, or disposal of hazardous waste can be  
6 distinguished; (2) amount of hazardous waste involved; (3)  
7 degree of toxicity of hazardous waste; (3) degree of  
8 involvement by parties in generation, transportation,  
9 treatment, storage, or disposal of hazardous waste; (4) degree  
10 of care exercised by parties with respect to hazardous waste  
11 concerns, taking into account characteristics of such hazardous  
12 waste; and, (5) the degree of cooperation by parties with  
13 federal, state or local officials to prevent any harm to public  
14 health or environment. Id. (emphasis added). TEO already  
15 admitted this fact in its answer to AmeriPride's 4th Amended  
16 Complaint. (Dkt. 756 39 at 6; Warner Depo. at 45:19-46:11.  
17 See also Dkt. 756 39 at 6; April 29, 2011 Deposition of  
18 Michael Kavanaugh ("Kavanaugh Depo.") at 34:1-12.) TEO's  
19 Position: TEO objects on the basis of relevance. This fact  
20 does not relate or correspond to an element of a relevant cause  
21 of action, as required by the Status (Pretrial Scheduling)  
22 Conference Order. Moreover, there is no evidence that the  
23 Board is tougher or less tough than any other regulator.) At  
24 the pretrial conference hearing held on October 7, 2011, the  
25 court overruled defendant TEO's objection on the basis of  
26 relevance and determined that this fact is undisputed. See



1 Hr'g Tr., ECF No. 775, at 24.

2 **IV. DISPUTED FACTUAL ISSUES**

3 **a. Facts Proposed by AmeriPride, But Disputed by TEO**

4 **i. Whether TEO and VIS, Inc. were "covered persons" under**  
5 **CERCLA?**

6 1. Whether or not TEO's predecessor, VIS, Inc., was the  
7 operator and owner of the Facility during the release of DNAPL  
8 PCE at the Facility? (AmeriPride's Position: TEO already  
9 admitted this fact in its answer to AmeriPride's 4th Amended  
10 Complaint. (Dkt. 756 57 at 8; Warner Expert Report, Table 8,  
11 Dkt. 707-10 at 16.) In addition, TEO admits in testimony given  
12 by its corporate designee: "I believe that a number of - of  
13 the operations and some of the events and releases that have  
14 been described by the witnesses and are recorded in some of the  
15 documentation would suggest that PCE entered the environment  
16 during the VIS years, yes." (TEO Depo. at 71:16-25.) TEO's  
17 Position: This is duplicative of other disputed facts.)

18 **ii. What Response Costs Were Incurred by the Parties?**

19 2. Whether or not AmeriPride incurred over \$18 million  
20 in response costs to address the PCE contamination caused by  
21 VIS, Inc. at the Facility, including \$474,730 in regulatory  
22 oversight costs; \$7,570,921 in investigation and remediation  
23 costs; and \$10.25 million to settle replacement water claims?  
24 (AmeriPride's Position: This was admitted by TEO in the Warner  
25 Expert Report at 40-41, Dkt. 707-1 at 52-53 and Table 12, Dkt.  
26 707-10 at 21. In addition, according to the Summary



1 Adjudication Order, "TEO does not dispute that these amounts  
2 were spent." (Dkt. 735 at 23.) In TEO's Position in response  
3 to this proposed fact, TEO does not dispute the fact itself.  
4 Instead, TEO improperly uses a "disputed fact" to reargue two  
5 motions it lost - the Summary Adjudication Motion and a motion  
6 to reopen discovery to seek insurance information filed both  
7 after the Summary Adjudication Order and after the discovery  
8 cut off. The premise of TEO's erroneous argument is that TEO  
9 deserves a credit for insurance payments, even though did not  
10 request a credit in its opposition to AmeriPride's summary  
11 judgment motion. The Summary Adjudication Order recognized  
12 three credits: (1) A credit for water reuse: "TEO argues that  
13 by re-using the treated water, AmeriPride offsets the cost of  
14 purchasing water from the city, but that AmeriPride has failed  
15 to include this savings in its cost calculations;" (Dkt. 735  
16 at 39); and, (2) Two credits for settlements with Chromalloy  
17 and Petrolane: "AmeriPride received settlement funds from  
18 Chromalloy and Petrolane which should be deducted from these  
19 amounts now sought." (Dkt. 715 56.) No offset by TEO for  
20 insurance payments was sought and the Court did not give one.  
21 Accordingly, the credits to be given have been decided.  
22 AmeriPride makes a detailed argument why TEO is wrong in the  
23 disputed evidentiary issues section of its separate pretrial  
24 statement which should be incorporated by reference here, if  
25 necessary. TEO's Position: At this point TEO does not dispute  
26 these amounts were spent. TEO disputes whether or not these

1 amounts were actually spent by AmeriPride. The evidence  
2 establishes that AmeriPride received insurance proceeds for the  
3 environmental investigation, remediation and litigation. Since  
4 there is no collateral source rule under CERCLA these proceeds  
5 should be deducted from any sums that AmeriPride alleges it  
6 spent, AmeriPride has presented no evidence that the money  
7 that it claims was spent was not reimbursed through insurance  
8 proceeds. As to the settlement monies, TEO disputes whether  
9 the monies paid were response costs or were otherwise compliant  
10 with the NCP.)

11 3. Whether or not AmeriPride has been required to incur  
12 at least \$7,570,921 on investigation and remediation through  
13 August 2010? (AmeriPride's Position: TEO admitted this fact  
14 in the Warner Expert Report at 40-41, Dkt. 707-1 at 52-53 and  
15 Table 12, Dkt. 707-10 at 21. In addition, according to the  
16 Summary Adjudication Order, "TEO does not dispute that these  
17 amounts were spent." (Dkt. 735 at 23.) In TEO's Position in  
18 response to this proposed fact, TEO does not dispute the fact  
19 itself. Instead, TEO improperly uses a "disputed fact" to  
20 reargue two motions it lost - the Summary Adjudication Motion  
21 and a motion to reopen discovery to seek insurance information  
22 filed both after the Summary Adjudication Order and after the  
23 discovery cut off. The premise of TEO's erroneous argument is  
24 that TEO deserves a credit for insurance payments, even though  
25 it did not request a credit in its opposition to AmeriPride's  
26 summary judgment motion. The Summary Adjudication Order

1 recognized three credits: (1) A credit for water reuse: "TEO  
2 argues that by re-using the treated water, AmeriPride offsets  
3 the cost of purchasing water from the city, but that AmeriPride  
4 has failed to include this savings in its cost calculations;"  
5 (Dkt. 735 at 39); and, (2) Two credits for settlements with  
6 Chromalloy and Petrolane: "AmeriPride received settlement  
7 funds from Chromalloy and Petrolane which should be deducted  
8 from these amounts now sought." (Dkt. 715 56.) No offset by  
9 TEO for insurance payments was sought and the Court did not  
10 give one. Accordingly, the credits to be given have been  
11 decided. AmeriPride makes a detailed argument why TEO is wrong  
12 in the disputed evidentiary issues section of its separate  
13 pretrial statement which should be incorporated by reference  
14 here, if necessary. TEO's Position: At this point TEO does  
15 not dispute this amount was spent. TEO disputes whether or not  
16 this amount was actually spent by AmeriPride. The evidence  
17 establishes that AmeriPride received insurance proceeds for the  
18 environmental investigation, remediation and litigation. Since  
19 there is no collateral source rule under CERCLA these proceeds  
20 should be deducted from any sums that AmeriPride alleges it  
21 spent, AmeriPride has presented no evidence that the money  
22 that it claims was spent was not reimbursed through insurance  
23 proceeds.)

24 4. Whether or not AmeriPride has been required to incur  
25 at least \$474,730 on regulatory oversight through September  
26 2010? (AmeriPride's Position: TEO admits this in the Warner

1 Expert Report at 40-41, Dkt. 707-1 at 52-53 and Table 12, Dkt.  
2 707-10 at 21. In addition, according to the Summary  
3 Adjudication Order, "TEO does not dispute that these amounts  
4 were spent." (Dkt. 735 at 23.) In TEO's Position in response  
5 to this proposed fact, TEO does not dispute the fact itself.  
6 Instead, TEO improperly uses a "disputed fact" to reargue two  
7 motions it lost - the Summary Adjudication Motion and a motion  
8 to reopen discovery to seek insurance information filed both  
9 after the Summary Adjudication Order and after the discovery  
10 cut off. The premise of TEO's erroneous argument is that TEO  
11 deserves a credit for insurance payments, even though did not  
12 request a credit in its opposition to AmeriPride's summary  
13 judgment motion. The Summary Adjudication Order recognized  
14 three credits: (1) A credit for water reuse: "TEO argues that  
15 by re-using the treated water, AmeriPride offsets the cost of  
16 purchasing water from the city, but that AmeriPride has failed  
17 to include this savings in its cost calculations;" (Dkt. 735  
18 at 39); and, (2) Two credits for settlements with Chromalloy  
19 and Petrolane: "AmeriPride received settlement funds from  
20 Chromalloy and Petrolane which should be deducted from these  
21 amounts now sought." (Dkt. 715 56.) No offset by TEO for  
22 insurance payments was sought and the Court did not give one.  
23 Accordingly, the credits to be given have been decided.  
24 AmeriPride makes a detailed argument why TEO is wrong in the  
25 disputed evidentiary issues section of its separate pretrial  
26 statement which should be incorporated by reference here, if

1 necessary. TEO's Position: At this point TEO does not dispute  
2 this amount was spent. TEO disputes whether or not this amount  
3 was actually spent by AmeriPride. The evidence establishes that  
4 AmeriPride received insurance proceeds for the environmental  
5 investigation, remediation and litigation. Since there is no  
6 collateral source rule under CERCLA these proceeds should be  
7 deducted from any sums that AmeriPride alleges it spent,  
8 AmeriPride has presented no evidence that the money that it  
9 claims was spent was not reimbursed through insurance  
10 proceeds.)

11 5. Whether or not AmeriPride's future response costs  
12 would be substantial, probably over a million dollars?  
13 (AmeriPride's Position: This fact is relevant to AmeriPride's  
14 declaratory relief claim. TEO already admitted this fact in  
15 its answer to AmeriPride's 4th Amended Complaint. (Dkt. 756  
16 47 at 7; Warner Depo. at 20:4-10.) TEO's Position:  
17 AmeriPride's future costs are unknown and there is no guarantee  
18 that they will be NCP compliant. Further, TEO objects on the  
19 basis of relevance. This fact does not relate or correspond  
20 to an element of a relevant cause of action, as required by the  
21 Status (Pretrial Scheduling) Conference Order. Furthermore,  
22 given the receipt of insurance proceeds, there is no proof that  
23 AmeriPride will incur these costs.)

24 **iii. Whether AmeriPride Made Payments for Replacement Water**  
25 **to Cal-Am Water Co. and Huhtamaki?**

26 6. Whether or not after the shutdown, these municipal



1 wells (Wilbur #1 and #2) and any related contamination claims  
2 were acquired by Cal-Am Water Co.)? (AmeriPride's Position:  
3 Previously, in its opposition to AmeriPride's Motion for  
4 Summary Judgment, TEO admitted this fact. (Dkt. 715 49.)  
5 Additional evidence supports this fact. (Dkt. 698-7 16, Ex.  
6 N at 1.) TEO feigns misunderstanding of the word "acquire,"  
7 but in the context of Cal-Am Water Co.'s claims it is clear  
8 because Cal-Am Water Co. acquired the wells listed in  
9 Undisputed Fact 81 as owned by Citizens Utilities Company. The  
10 claims were transferred with the wells to Cal-Am Water Co.  
11 TEO's Position: The meaning of this sentence is not clear. TEO  
12 is also unaware of what meaning AmeriPride ascribes to  
13 "acquired" and AmeriPride has provided no elaboration.)

14 7. Whether or not AmeriPride and VIS, Inc. each were  
15 required by the RWQCB's CAO No. R5-2003-0059 to provide  
16 Huhtamaki with replacement water following extensive sampling  
17 by AmeriPride? (AmeriPride's Position: TEO admitted this fact  
18 in its answer to AmeriPride's 4th Amended Complaint. (Dkt. 756  
19 50 at 7. See also Dkt. 698-7 14, Ex. H 2-5 at 7-8; Dkt. 735  
20 at 23; Dkt. 715 66.) TEO's Position: CAO No. R5-2003-0059  
21 required AmeriPride and VIS, Inc. to submit a work plan, not  
22 to provide Huhtamaki with replacement water. The CAO left the  
23 remedy open to the parties to determine. ("By 20 June 2003  
24 submit a work plan to provide an interim alternate supply to  
25 replace in-kind the supplies lost from Wilbur #1 and Wilbur #2,  
26 municipal water supply wells, and Chinnet #1 and Chinnet #2 water



1 supply wells for the Huhtamaki facility, in coordination with  
2 the wells' owners/operators. The interim water supply  
3 replacement shall be in effect during the time required to  
4 develop a permanent alternate supply unless a permanent  
5 alternate supply is provided in the short term. The work plan  
6 shall include a schedule, detailed proposals and a commitment  
7 by the Discharger to implement the work plan, including any  
8 necessary agreements or permits. If any proposed interim action  
9 requires Department of Health Services approval prior to  
10 implementation, the work plan shall demonstrate that the action  
11 will comply with Department of Health Services requirements and  
12 that the Discharger has discussed and coordinated the proposal  
13 with Department of Health Services, Cal Am and Huhtamaki  
14 personnel." (Pg 7, pp2). AmeriPride choose the remedy that it  
15 provided. Not the Board.)

16 8. Whether or not AmeriPride was required by the RWQCB's  
17 CAO No. R5-2005-0721 to provide in-kind replacement water for  
18 Huhtamaki, Inc? (AmeriPride's Position: TEO admitted this  
19 fact in its answer to AmeriPride's 4th Amended Complaint.  
20 (Dkt. 756 50 at 7; Dkt. 698-7 14, Ex. I 2-4 at 11-12; Dkt.  
21 735 at 23; Dkt. 715 66.) TEO's Position: CAO No.  
22 R5-2005-0721 required AmeriPride to submit a work plan  
23 outlining how to provide in kind water replacement to  
24 Huhtamaki. The CAO left the remedy open to the parties to  
25 determine. ("By December 15 submit a detailed technical work  
26 plan outlining how the Discharger will provide in kind

1 replacement water to Huhtamaki for the water supply lost due  
2 to pollution and proper abandonment to the Chinet #1 and #2  
3 water supply wells." (Pg 11, pp 2). AmeriPride choose the  
4 remedy that it provided. Not the Board.)

5 9. Whether or not RWQCB CAO No. R5-2007-0723  
6 acknowledged that the RWQCB's requirement that AmeriPride  
7 provide replacement water for Huhtamaki had been satisfied by  
8 the February 12, 2007 settlement between AmeriPride and  
9 Huhtamaki? (AmeriPride's Position: TEO admitted this fact in  
10 its answer to AmeriPride's 4th Amended Complaint. (Dkt. 756  
11 50 at 7; Dkt. 698-7 14, Ex. K 58 at 10; Dkt. 735 at 23; Dkt.  
12 715 69.) TEO's Position: The CAO does not state that  
13 AmeriPride's settlement with Huhtamaki satisfied the RWQCB's  
14 requirement that AmeriPride provide replacement water for  
15 Huhtamaki. ("On 12 February 2007, Huhtamaki and AmeriPride  
16 signed a Settlement Agreement resolving issues with respect to  
17 water replacement costs, water supply replacement, and the  
18 method of replacement and the closure of the two Chinet Wells.  
19 Therefore, requirements for water supply replacement for the  
20 industrial supply wells Chinet #1 and Chinet #2 have been  
21 removed from this Order. Closure of these wells is still a  
22 requirement in this Order." CAO No. R5-2007-0723 58).)

23 10. Whether or not AmeriPride paid \$2,000,000 to Cal-Am  
24 Water Co. to settle the water replacement claims Cal-Am Water  
25 Co. had against AmeriPride? (AmeriPride's Position: TEO  
26 admitted this fact in its answer to AmeriPride's 4th Amended

1 Complaint. (Dkt. 756 54 at 7; Warner Expert Report at 40-41,  
2 Dkt. 707-1 at 52-53 and Table 12, Dkt. 707-10 at 21.)  
3 According to the Court's May 12, 2011 summary judgment order,  
4 "TEO does not dispute that these amounts were spent." (Dkt.  
5 735 at 23.) TEO's Position: TEO does not dispute this amount  
6 was spent. TEO disputes whether this amount was actually spent  
7 by AmeriPride. The evidence establishes that AmeriPride  
8 received insurance proceeds for the environmental  
9 investigation, remediation and litigation. Since there is no  
10 collateral source rule under CERCLA, these proceeds should be  
11 deducted from any sums that AmeriPride alleges it spent.  
12 AmeriPride has presented no evidence that the money that it  
13 claims was spent was not reimbursed through insurance proceeds.  
14 Moreover, the agreement settled all claims that Cal-Am had  
15 against AmeriPride, including the water replacement claims, and  
16 claims for lost of business, diminution in value, and other  
17 damages.)

18 11. Whether or not RWQCB CAO No. R5-2007-0723 stated that  
19 the RWQCB's requirement that AmeriPride provide replacement  
20 water for Cal-Am Water Co. had been satisfied by the settlement  
21 between AmeriPride and Cal-Am Water Co? (AmeriPride's  
22 Position: TEO admitted this fact in its answer to AmeriPride's  
23 4th Amended Complaint. (Dkt. 756 50 at 7; Dkt. 698-7 14, Ex.  
24 K 37 at 6. See also Dkt. 698-7 14, Ex. I 42 at 7; Dkt. 735  
25 at 23; Dkt. 715 75.) TEO's Position: The CAO does not state  
26 that AmeriPride's settlement with Cal-Am Water Co. satisfied

1 the RWQCB's requirement that AmeriPride provide replacement  
2 water for Cal-Am Water Co. ("On 12 February 2007, Huhtamaki and  
3 AmeriPride signed a Settlement Agreement resolving issues with  
4 respect to water replacement costs, water supply replacement,  
5 and the method of replacement and the closure of the two Chinet  
6 Wells. Therefore, requirements for water supply replacement for  
7 the industrial supply wells Chinet #1 and Chinet #2 have been  
8 removed from this Order. Closure of these wells is still a  
9 requirement in this Order." CAO No. R5-2007-0723 58).)

10 12. Whether or not the RWQCB required AmeriPride to  
11 provide replacement water to Huhtamaki and Cal-Am Water Co.  
12 because of the impacts of DNAPL PCE released at the Facility  
13 on the water wells owned by them? (AmeriPride's Position:  
14 Previously, in its opposition to AmeriPride's Motion for  
15 Summary Judgment, TEO admitted this fact. (Dkt. 715 61.)  
16 Additional evidence supports this fact. (Dkt. 698-7 14, Ex.  
17 H 2-5 at 7-8, Ex. I 38-42 at 6-7, and Ex. J 2-7 at 14-15;  
18 Dkt. 735 at 23.) TEO's Position: There is no valid evidence  
19 supporting this fact. The RWQCB Orders AmeriPride alleges  
20 support this fact required AmeriPride to develop a work plan  
21 for water supply replacement. At most the Orders required the  
22 payment for interim water while a final resolution was agreed  
23 upon. There is no proof that AmeriPride made any of these  
24 payments. The final remedy was left entirely open to the  
25 parties.)

26 13. Whether or not the RWQCB CAO No. R5-2006-0530

1 required the payment of monetary compensation to Huhtamaki,  
2 Inc. for replacement water? (AmeriPride's Position: TEO  
3 admitted this fact in its answer to AmeriPride's 4th Amended  
4 Complaint. Dkt. 756 50 at 7; Dkt. 698-7 14, Ex. J 2-3 at  
5 14-15; Dkt. 715 67. See also Dkt. 735 at 23.) TEO's  
6 Position: There is no evidence supporting this fact. The  
7 RWQCB Order AmeriPride alleges support this fact required  
8 AmeriPride to develop a work plan for water supply replacement.  
9 At most the Orders required the payment for interim water while  
10 a final resolution was agreed upon. There is no proof that  
11 AmeriPride made any of these payments. The final remedy was  
12 left entirely open to the parties.

13 14. Whether or not AmeriPride paid \$8,250,000 to  
14 Huhtamaki to settle the water replacement claims Huhtamaki had  
15 against AmeriPride? (AmeriPride's Position: TEO's expert, Mr.  
16 Warner, admitted this fact. Warner Expert Report at 40-41,  
17 Dkt. 707-1 at 52-53 and Table 12, Dkt. 707-10 at 21. In TEO's  
18 Position in response to this proposed fact, TEO does not  
19 dispute the fact itself. Instead, TEO improperly uses a  
20 "disputed fact" to reargue two motions it lost - the Summary  
21 Adjudication Motion and a motion to reopen discovery to seek  
22 insurance information filed both after the Summary Adjudication  
23 Order and after the discovery cut off. The premise of TEO's  
24 erroneous argument is that TEO deserves a credit for insurance  
25 payments, even though did not request a credit in its  
26 opposition to AmeriPride's summary judgment motion. The

1 Summary Adjudication Order recognized three credits: (1) A  
2 credit for water reuse: "TEO argues that by re-using the  
3 treated water, AmeriPride offsets the cost of purchasing water  
4 from the city, but that AmeriPride has failed to include this  
5 savings in its cost calculations;" (Dkt. 735 at 39); and, (2)  
6 Two credits for settlements with Chromalloy and Petrolane:  
7 "AmeriPride received settlement funds from Chromalloy and  
8 Petrolane which should be deducted from these amounts now  
9 sought." (Dkt. 715 56.) No offset by TEO for insurance  
10 payments was sought and the Court did not give one.  
11 Accordingly, the credits to be given have been decided.  
12 AmeriPride makes a detailed argument why TEO is wrong in the  
13 disputed evidentiary issues section of its separate pretrial  
14 statement which should be incorporated by reference here, if  
15 necessary. TEO's Position: The court denied AmeriPride's  
16 Motion on the settlement payments and reached no conclusions  
17 on the ability of AmeriPride to recover these alleged payments.  
18 TEO does not dispute this amount was spent. TEO disputes  
19 whether this amount was actually spent by AmeriPride, and  
20 whether it settled only the water replacement claims Huhtamaki  
21 had against AmeriPride. The agreement settled other claims as  
22 well. On 12 February 2007, Huhtamaki and AmeriPride signed a  
23 Settlement Agreement resolving all issues between them,  
24 including claims for business lost and diminution in value.)

25 15. Whether or not AmeriPride paid a total of \$10.25  
26 million to settle the replacement water claims of Huhtamaki



1 (\$8.25 million) and Cal-Am Water Co. (\$2 million)?  
2 (AmeriPride's Position: Mr. Warner, TEO's expert, admits this  
3 fact. (Warner Expert Report at 40-41, Dkt. 707-1 at 52-53 and  
4 Table 12, Dkt. 707-10 at 21.) In addition, according to the  
5 Summary Adjudication Order, "TEO does not dispute that these  
6 amounts were spent." (Dkt. 735 at 23.) In TEO's Position  
7 in response to this proposed fact, TEO's position does not a  
8 dispute of the fact itself. Instead, TEO improperly uses a  
9 "disputed fact" to reargue two motions it lost - the Summary  
10 Adjudication Motion and a motion to reopen discovery to seek  
11 insurance information filed both after the Summary Adjudication  
12 motion and the discovery cut off. The premise of TEO's  
13 erroneous is that TEO deserves a credit for insurance payments,  
14 even though did not request a credit in its opposition to  
15 AmeriPride's summary judgment motion. The Summary Adjudication  
16 Order recognized three credits: (1) A credit for water reuse:  
17 "TEO argues that by re-using the treated water, AmeriPride  
18 offsets the cost of purchasing water from the city, but that  
19 AmeriPride has failed to include this savings in its cost  
20 calculations;" (Dkt. 735 at 39); and, (2) Two credits for  
21 settlements with Chromalloy and Petrolane: "AmeriPride  
22 received settlement funds from Chromalloy and Petrolane which  
23 should be deducted from these amounts now sought." (Dkt. 715  
24 56.) No offset by TEO for insurance payments was sought and  
25 the Court did not give one. Accordingly, the credits to be  
26 given have been decided. AmeriPride makes a detailed argument

1 why TEO is wrong in the disputed evidentiary issues section of  
2 its separate pretrial statement which should be incorporated  
3 by reference here, if necessary. TEO's Position: The court  
4 denied AmeriPride's Motion on the settlement payments and  
5 reached no conclusions on the ability of AmeriPride to recover  
6 these alleged payments. TEO does not dispute this amount was  
7 spent. TEO disputes whether this amount was actually spent by  
8 AmeriPride. The evidence establishes that AmeriPride received  
9 insurance proceeds for the environmental investigation,  
10 remediation and litigation. Since there is no collateral  
11 source rule under CERCLA these proceeds should be deducted from  
12 any sums that AmeriPride alleges it spent, AmeriPride has  
13 presented no evidence that the money that it claims was spent  
14 was not reimbursed through insurance proceeds. Moreover, the  
15 agreement settled all claims that plaintiffs had against  
16 AmeriPride, including the water replacement claims, and claims  
17 for lost of business, diminution in value and other damages.)

18 **iv. Whether the Parties Cooperated with the Regulators?**

19 16. Whether AmeriPride cooperated with the RWQCB in  
20 ensuring that the contaminated soil and groundwater are  
21 remediated to prevent migration of PCE to drinking water wells?  
22 (AmeriPride's Position: TEO has never denied this fact,  
23 including in its response to AmeriPride's Statement of  
24 Undisputed Facts in Support of its Motion for Summary Judgment  
25 (Dkt. 715 at 19), and in its answer to AmeriPride's 4th Amended  
26 Complaint (Dkt. 756 60 at 8). (See also Dkt. 698-8 36-40,

1 51, 53; Dkt. 698-17 12, 22, 23, and 30; Dkt. 698-7 5 and 15;  
2 Dkt. 698-6 12-13.) TEO's Position: TEO never admitted  
3 AmeriPride cooperated with the RWQCB. This fact is disputed.)

4 17. Whether or not TEO refused to participate in the  
5 investigation and remediation of the contamination caused by  
6 the DNAPL PCE released by VIS, Inc. at and from the Facility,  
7 including refusing to comply with the cleanup and abatement  
8 orders issued by the RWQCB? (AmeriPride's Position:  
9 Previously, TEO admitted this fact. (Dkt. 103 84; Dkt. 125  
10 84.) TEO's answer to AmeriPride's third party complaint, filed  
11 on February 23, 2001 states: "TEO admits that it has not taken  
12 action to remove alleged contaminants from the Facility, to  
13 share in the cost of removal of alleged contaminants, or to  
14 remediate alleged contamination at and under the Facility  
15 because it is not obligated to do so." (Dkt. 125 84.) It was  
16 not impossible for TEO to participate any more than it has been  
17 impossible for TEO to participate in this civil action. Plus,  
18 TEO clearly has insurance and its insurers could have enabled  
19 TEO's participation, just as they are now doing in this civil  
20 action. TEO's Position: TEO did not refuse to participate in  
21 the investigation and remediating because it was physically and  
22 legally impossible for TEO to have done so. Refusal assumes  
23 a conscious decision not to do something and since TEO did not  
24 exist it could not refuse to do anything. It is undisputed TEO  
25 is a dissolved corporation and has been so since 1992. TEO  
26 dissolved over ten years before any CAO was issued or

1 remediation was undertaken. Even after the Receiver was  
2 appointed, it was impossible for TEO to participate. The order  
3 appointing the Receiver gave the Receiver very limited powers  
4 that did not include complying with the CAO. TEO was never  
5 listed on any CAO. As a result thereof, TEO did not refuse to  
6 participate since it did not have an obligation to do. In  
7 addition, the theoretical existence of insurance does not  
8 change the status of TEO. The insurers are not a responsible  
9 party under CERCLA nor were they, or could they, be named as  
10 a discharger by the RWQCB.)

11 18. Whether or not AmeriPride has paid for all the  
12 investigation and remediation, all the regulatory oversight and  
13 all the replacement water costs associated with the Site?  
14 (AmeriPride's Position: TEO admitted this in the Warner Expert  
15 Report at 40-41, Dkt. 707-1 at 52-53 and Table 12, Dkt. 707-10  
16 at 21. According to the Summary Adjudication Order, "TEO does  
17 not dispute that these amounts were spent." (Dkt. 735 at 23.)  
18 In TEO's Position in response to this proposed fact, TEO does  
19 not dispute the fact itself. Instead, TEO improperly uses a  
20 "disputed fact" to reargue two motions it lost - the Summary  
21 Adjudication Motion and a motion to reopen discovery to seek  
22 insurance information filed both after the Summary Adjudication  
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24 erroneous argument is that TEO deserves a credit for insurance  
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1 Summary Adjudication Order recognized three credits: (1) A  
2 credit for water reuse: "TEO argues that by re-using the  
3 treated water, AmeriPride offsets the cost of purchasing water  
4 from the city, but that AmeriPride has failed to include this  
5 savings in its cost calculations;" (Dkt. 735 at 39); and, (2)  
6 Two credits for settlements with Chromalloy and Petrolane:  
7 "AmeriPride received settlement funds from Chromalloy and  
8 Petrolane which should be deducted from these amounts now  
9 sought." (Dkt. 715 56.) No offset by TEO for insurance  
10 payments was sought and the Court did not give one.  
11 Accordingly, the credits to be given have been decided.  
12 AmeriPride makes a detailed argument why TEO is wrong in the  
13 disputed evidentiary issues section of its separate pretrial  
14 statement which should be incorporated by reference here, if  
15 necessary. TEO's Position: At this point TEO does not dispute  
16 these costs were paid. TEO disputes whether or not these  
17 costs, and what amount of these costs, were actually paid by  
18 AmeriPride. The evidence establishes that AmeriPride received  
19 insurance proceeds for the environmental investigation,  
20 remediation and litigation. Since there is no collateral  
21 source rule under CERCLA these proceeds should be deducted from  
22 any sums that AmeriPride alleges it spent, AmeriPride has  
23 presented no evidence that the money that it claims was spent  
24 was not reimbursed through insurance proceeds. AmeriPride  
25 argues that its payments to remediate and investigate the Site  
26 are relevant Gore factors. Therefore, independent of the



1 relevance to the § 107 claim, whether the monies paid by  
2 AmeriPride were its own or were from insurance proceeds is  
3 relevant to the Gore factors.)

4 **v. Whether PCE has the Following Properties?**

5 19. Whether or not DNAPLs have been extensively studied  
6 (USEPA, 1991, 1992a, and 1993) in the environmental field for  
7 many years because they present significant challenges for  
8 groundwater remediation to low concentrations like MCLs?  
9 (AmeriPride's Position: This fact is relevant to show the  
10 relative difficulty of remediation the DNAPL PCE releases from  
11 TEO's predecessor, VIS, Inc. Specifically, Gore Factor (3),  
12 cited in AmeriPride's response to Disputed Fact 20 is: "(3)  
13 degree of toxicity of hazardous waste." TEO already admitted  
14 this fact in its answer to AmeriPride's 4th Amended Complaint.  
15 (Dkt. 756 14 at 3; Warner Expert Report at 16, Dkt. 707-1 at  
16 28.) TEO's Position: TEO objects on the basis of relevance.  
17 This purported "fact" does not relate or correspond to an  
18 element of a relevant cause of action, as required by the  
19 Status (Pretrial Scheduling) Conference Order.)

20 20. Whether or not DNAPL PCE is clear in color, making  
21 it hard to see as DNAPL in the subsurface? (AmeriPride's  
22 Position: TEO admitted this fact in its answer to AmeriPride's  
23 4th Amended Complaint. (Dkt. 756 10 at 3; Warner Depo. at  
24 150:4-8.) TEO's Position: TEO admitted that DNAPL PCE may be  
25 clear, not that it is always clear in color. The color of  
26 DNAPL is dependant on site conditions.)



1           21. Whether or not PCE is only slightly soluble in water?  
2 (AmeriPride's Position: TEO admitted this fact in its answer  
3 to AmeriPride's 4th Amended Complaint. (Dkt. 756 11 at 3;  
4 Dkt. 715 15.) TEO's Position: The meaning of "slightly  
5 soluble" is vague. TEO is unaware of what AmeriPride means by  
6 the term, therefore, the fact is in dispute.)

7           22. Whether or not, at the Site, the vadose zone soil  
8 vapors partitioning between groundwater and soil and so the  
9 vapors are interacting with groundwater? (AmeriPride's  
10 Position: TEO already admitted this fact in its answer to  
11 AmeriPride's 4th Amended Complaint. (Dkt. 756 30 at 5; Warner  
12 Depo. at 147:7-16.) Mr. Warner, TEO's expert, testified the  
13 vadose zone soil vapors were partitioning between groundwater  
14 and soil and so the vapors are interacting with groundwater at  
15 this Site. TEO's Position: Whether or not this occurs depends  
16 on numerous site conditions, such as the amount of PCE  
17 released, the depth to groundwater, the soil conditions and the  
18 presence of a source of water. Since site conditions vary by  
19 site location, a generalization cannot be made that this  
20 process is occurring broadly at "the Site." At the Site, any  
21 interactions between soil gas and PCE did not significantly  
22 affect groundwater.)

23           23. Whether or not, since the MCL for PCE is pretty low  
24 at 5 parts per billion, it does not take very much PCE to cause  
25 a big problem? (AmeriPride's Position: TEO admitted this fact  
26 in its answer to AmeriPride's 4th Amended Complaint. (Dkt. 756

1 13 at 3; Warner Depo. at 152:8-15.) These are the words of Mr.  
 2 Warner, TEO's expert. TEO's Position: The objective numbers  
 3 are not in dispute, but AmeriPride's characterizations are  
 4 inaccurate and not appropriate. The meaning of "very much" and  
 5 "a big problem" is vague and unquantifiable. TEO is unaware  
 6 of what AmeriPride means by the terms. Further, this is a  
 7 generalization which cannot be extrapolated to apply to all  
 8 areas of the Site because Site conditions vary. TEO expressly  
 9 denied this fact in its Answer to AmeriPride's 4th Amended  
 10 Complaint.)

11 24. Whether or not PCE undergoes transformation by  
 12 chemical and biochemical reactions, leading to degradation to  
 13 less chlorinated compounds, including the breakdown VOCs TCE;  
 14 c-1,2-DCE; t-1,2 DCE; 1,1, DCE and vinyl chloride?  
 15 (AmeriPride's Position: TEO admitted this fact in its answer  
 16 to AmeriPride's 4th Amended Complaint. (Dkt. 756 15 at 3.)  
 17 Paragraph 45 of AmeriPride's 4th Amended Complaint states:

18 45. After the initial release of DNAPL PCE to the  
 19 subsurface, PCE dissolves from DNAPL PCE to soil water and  
 20 groundwater, vaporizes into soil gas, and sorbs to soil  
 21 surfaces. PCE also undergoes transformation by chemical and  
 22 biochemical reactions, leading to degradation to less  
 23 chlorinated compounds, including the following breakdown VOCs:  
 24 TCE; c-1,2-DCE; t-1,2 DCE; 1,1, DCE and vinyl chloride. Thus,  
 25 DNAPL PCE can serve as a long-term source of continuing  
 26 dissolved PCE and VOC contamination to the groundwater. This  
 allegation is not disputed by TEO. (Dkt. 715 17.)  
 TEO's answer at Paragraph 15 states:

24 15. Answering paragraph 45 of the FAC, specifically  
 25 the last two sentences contained therein, TEO alleges that  
 26 whether or not DNAPL PCE can act as a long term source of  
 contamination depends on numerous site conditions including the  
 amount of PCE released, and the amount of organic material in

1 the soil. TEO admits the other allegations contained in said  
2 paragraph.

3 (Emphasis added.) TEO's Position: Whether or not this occurs  
4 depends on numerous site conditions including the amount of PCE  
5 released, and the amount of organic material in the soil. For  
6 instance, in aerobic conditions PCE does not readily degrade  
7 and the Site is generally aerobic.)

8 25. Whether or not, after the initial release of DNAPL  
9 PCE to the subsurface, PCE dissolves from DNAPL PCE to soil  
10 water and groundwater, vaporizes into soil gas, and sorbs to  
11 soil surfaces? (AmeriPride's Position: TEO admitted this  
12 fact in its answer to AmeriPride's 4th Amended Complaint.  
13 (Dkt. 756 15 at 3.) TEO's Position: PCE generally does this,  
14 subject to Site conditions. Contrary to AmeriPride's  
15 characterization, this process is not unique to DNAPLs.)

16 26. Whether or not DNAPL PCE can serve as a long-term  
17 source of continuing dissolved PCE and VOC contamination to the  
18 groundwater? (AmeriPride's Position: This allegation was not  
19 disputed by TEO in its opposition to AmeriPride's Summary  
20 Judgment Motion. (Dkt. 715 17.) In addition, TEO's expert,  
21 Mr. Warner, admitted this in his expert report. (Dkt. 707-1  
22 at 29.) TEO's Position: PCE does this. Contrary to  
23 AmeriPride's characterization, this process is not unique to  
24 DNAPLs. Further, whether or not PCE or DNAPL PCE can act as  
25 a long term source of contamination depends on numerous site  
26 conditions including the amount of PCE released, and the amount

1 of organic material in the soil.)

2 27. Whether or not when DNAPLs like PCE migrate below the  
3 water table and are not remediated, they tend to act as  
4 long-term sources of dissolved PCE in groundwater?  
5 (AmeriPride's Position: TEO already admitted this fact in its  
6 answer to AmeriPride's 4th Amended Complaint. (Dkt. 756 14  
7 at 3; Warner Expert Report at 17, Dkt. 707-1 at 29.) TEO's  
8 Position: Whether or not this occurs depends on numerous site  
9 conditions.)

10 **vi. Whether there was any PCE Use by AmeriPride at the**  
11 **Facility?**

12 28. Whether or not AmeriPride or its corporate  
13 predecessor, Welch's Overall, ever used PCE at the Facility?  
14 (AmeriPride's Position: TEO already admitted that AmeriPride  
15 and its corporate predecessor never used PCE. On April 25,  
16 2011, in the Corporate Deposition of TEO pursuant to Federal  
17 Rule of Civil Procedure 30(b)(6) ("TEO Depo.") at 71:10-15, TEO  
18 admitted that use of PCE at the Facility ceased before 1983.  
19 Other evidence supporting this fact is at Dkt. 698-7 9, Ex.  
20 D at 76:8-77:19; Dkt. 698-7 10, Ex. E at 10:1-11, 51:5-13, and  
21 80:12-20; Dkt. 698-9 15-16; Dkt. 698-11 at 8, Ex. B at 3; Dkt.  
22 698-16, Ex. C. TEO's Position: The evidence does not  
23 substantiate that there was no use of products containing VOCs.  
24 TEO agreed only that dry cleaning at the Facility ceased before  
25 1983. This is not analogous to an agreement that AmeriPride or  
26 its predecessor never used PCE at the Facility. TEO's

1 corporate designee was testifying concerning VIS, Inc.'s  
2 operations at the Site not AmeriPride's.)

3 29. Whether or not there is any evidence of releases of  
4 DNAPL PCE by AmeriPride at the Facility? (AmeriPride's  
5 Position: TEO, through its corporate designee, testified that  
6 dry cleaning stopped before AmeriPride's period of ownership  
7 started. (TEO Depo. at 71:10-15.) Furthermore, there is no  
8 evidence of DNAPL PCE releases by AmeriPride - by definition  
9 PCE in wastewater cannot be DNAPL PCE because of its very low  
10 solubility in water. TEO's Position: TEO agreed only that dry  
11 cleaning at the Facility ceased before 1983. This is not  
12 analogous to an agreement that AmeriPride or its predecessor  
13 never used PCE at the Facility. Further, the wastewater had  
14 concentrations of PCE in the DNAPL range. It is undisputed  
15 that wastewater leaked during AmeriPride's ownership and  
16 operation of the Facility.)

17 **vii. Whether Releases of PCE During VIS, Inc.'s Ownership of**  
18 **the Facility Reached Groundwater?**

19 30. Whether or not groundwater contamination as a  
20 result of PCE vapors transported to the water table and water  
21 that infiltrates through spill zones is carrying chemicals down  
22 to the water table at the Site? (AmeriPride's Position: TEO  
23 admitted this fact in its answer to AmeriPride's 4th Amended  
24 Complaint. (Dkt. 756 30 at 5; Warner Depo. at 135:15-24.)  
25 This fact is from Mr. Warner, TEO's expert's testimony.  
26 Additionally, testimony from TEO's own expert proves that



1 residual DNAPL PCE caused groundwater contamination via  
2 leaching and vapor transport:

3 Q. Okay. If the - if the DNAPL didn't make its way all  
4 the way to groundwater, why is there a groundwater  
5 contamination?

6 A. Well, vapors can be transported to the water table and  
7 can contaminate groundwater. That's pretty well  
8 established. And water that infiltrates through spill  
9 zones can carry chemicals down to the water table.

10 Q. Do you think that process is happening at the - at our  
11 site?

12 A. Yes.

13 31. (Warner Depo. 135:15-24, emphasis added.) TEO's  
14 Position: The alleged fact does not make sense. All that  
15 TEO's expert stated was that it is possible that vapors can be  
16 transported to the water table and can contaminate groundwater.  
17 There is a dispute as to whether this process is actually  
18 occurring at the Site. Any effect that vapors have had on  
19 groundwater contamination at the Site is minor at worst.)

20 32. Whether or not the pipe that broke in 1980 or 1981  
21 while a storage tank for DNAPL PCE was being moved spilled 50  
22 to 100 gallons of DNAPL PCE on to the ground at the Facility?  
23 (AmeriPride's Position: TEO already admitted this fact. (Dkt.  
24 735 at 10; Dkt. 715 21; Warner Expert Report, Table 8, Dkt.  
25 707-10 at 16.) TEO's Position: TEO does not dispute that  
26 there was a release. However, the amount of the release is



1 disputed.)

2 33. Whether or not the overflow of a PCE storage tank  
3 occurred in the late 1970s when a delivery truck driver left  
4 the pump running while filling the PCE storage tank causing a  
5 DNAPL PCE to spill across the floor and into a nearby canal  
6 caused at least some of this DNAPL PCE to seep into the  
7 subsurface and reached groundwater? (AmeriPride's Position:  
8 TEO's expert admitted this fact. (Warner Depo. at 110:4-15;  
9 Dkt. 697 at 24.) TEO's Position: There is no evidence that  
10 DNAPL PCE contaminated the soil subsurface and reached the  
11 groundwater as a result of this overfills. The evidence  
12 establishes the opposite.)

13 34. Whether or not VIS, Inc. exercised a high degree of  
14 care in its use of PCE, taking into account the characteristics  
15 of PCE? (AmeriPride's Position: Admissions by TEO prove this  
16 fact. (Dkt. 756 62 at 8; Warner Expert Report, Table 8, Dkt.  
17 707-10 at 16; TEO Depo. at 71:16-25.) TEO's Position: There  
18 is no evidence of the relevant standard of care during the  
19 period VIS, Inc. operated the Facility, let alone that VIS,  
20 Inc. failed to satisfy it. Moreover, there is no obligation  
21 to exercise a "high" degree of care, but only ordinary care.)

22 35. Whether or not releases from the wastewater system  
23 during VIS, Inc.'s ownership would have resulted in a material  
24 contribution of PCE to the subsurface? (AmeriPride's Position:  
25 This fact presents an alternative theory why, based on TEO's  
26 own expert testimony, AmeriPride's allocated share must be

1 small. AmeriPride's expert, Dr. Farr, disputes there were  
2 material contributions from the wastewater during VIS, Inc.'s  
3 ownership, but TEO's expert, Mr. Warner, claims this is so.  
4 (Dkt. 756 28 at 5; Warner Depo. at 198:22-199:5.) If Mr.  
5 Warner were correct, then any wastewater releases from VIS,  
6 Inc. would essentially balance out any alleged waste water  
7 releases by AmeriPride, making them essentially irrelevant for  
8 purposes of allocation. TEO's Position: TEO objects to this  
9 fact on the basis it is outside the context of AmeriPride's  
10 expert Anne Farr's opinion. In her reports, Dr. Farr gave no  
11 opinions on this fact and it is improper for her to render such  
12 opinions at this stage of the proceedings. There is no  
13 evidence regarding the amount of water that VIS, Inc. may have  
14 used, or the concentrations of chemicals in the water or the  
15 effect on the subsurface.)

16 36. Whether or not wastewater releases from the  
17 wastewater system at the Facility would have caused residual  
18 DNAPL from DNAPL PCE releases to reach groundwater in  
19 approximately 2-3 years, resulting in the DNAPL PCE releases  
20 by VIS, Inc. listed in Table 8 to the Warner Expert Report  
21 reaching groundwater prior to 1983? (AmeriPride's Position:  
22 AmeriPride's expert, Dr. Farr, opined that releases of DNAPL  
23 PCE itself reached groundwater. However, TEO's experts  
24 disagree and claim that DNAPL PCE provides only "residual  
25 DNAPL" at the Site. This fact presents an alternative theory  
26 why, based on TEO's own expert testimony, AmeriPride's

1 allocated share must be small because, even if TEO's experts  
2 are correct, according to calculations by TEO's expert, Ms.  
3 Gates, wastewater released by VIS, Inc. would have driven the  
4 PCE to groundwater before 1983 when AmeriPride began  
5 operations. (See Dkt. 756 29 at 5; Gates Depo. at 131:6-132:4.  
6 Dkt. 756 29 at 5.) TEO's Position: This is not a plain  
7 concise statement, and its meaning is not clear. If this fact  
8 refers to VIS, Inc.'s period of operation, TEO objects to this  
9 fact on the basis it is outside the context of AmeriPride's  
10 expert Anne Farr's opinion. In her reports, Dr. Farr gave no  
11 opinions on this fact and it is improper for her to render such  
12 opinions at this stage of the proceedings. There is no  
13 evidence regarding the amount of water that VIS may have used,  
14 or the concentrations of chemicals in the water or the effect  
15 on the subsurface.)

16 **viii. What is TEO's Liability Under the CAOs Issued by**  
17 **RWQCB?**

18 37. Whether a person who is named as a "discharger," as  
19 VIS, Inc. was under the CAO's listed in Undisputed Fact 83 of  
20 the Undisputed Facts Section, above, must comply with them?  
21 (AmeriPride's Position: TEO's experts testified that  
22 compliance is required. (Kavanaugh Depo. at 32:19-22; Warner  
23 Depo at 54:17-55:2 and 55:17-23.) TEO's Position: In the  
24 case of VIS, Inc., it did not exist at the time any CAO listing  
25 VIS, Inc. was issued. It is undisputed VIS, Inc. was merged  
26 with Automotive Repairs in 1990, which subsequently merged with

1 TEO in 1991. As a result of the merger, VIS, Inc., as a  
2 separate entity, ceased to exist. The Board never named the  
3 corporate successor. Likewise, TEO was never named or listed  
4 as a party in any of the CAOs listing VIS, Inc. Nor did the  
5 Water Board ever institute an enforcement action against TEO.  
6 Further, it is undisputed TEO is a dissolved corporation. TEO  
7 dissolved over ten years before any CAO was issued or  
8 remediation was undertaken. TEO did not and does not have the  
9 physical or legal capacity to comply with the CAOs. As a  
10 result thereof, TEO is not under an obligation to do so.)

11 38. Whether or not each of the CAOs listed in Undisputed  
12 Fact 83 requires action of the discharger, lists VIS, Inc. as  
13 a discharger collectively, and everything required in the CAOs  
14 is required of both parties? (AmeriPride's Position: TEO  
15 admitted this in the TEO Depo. at 68:4-69:10. TEO's Position:  
16 In the case of VIS, Inc., it did not exist at the time any CAO  
17 listing VIS, Inc. was issued. It is undisputed VIS, Inc. was  
18 merged with Automotive Repairs in 1990, which subsequently  
19 merged with TEO in 1991. As a result of the merger, VIS, Inc.,  
20 as a separate entity, ceased to exist. The Board never named  
21 the corporate successor. Moreover, TEO was never named or  
22 listed as a party in any of the CAOs listing VIS, Inc. Nor did  
23 the Water Board ever institute an enforcement action against  
24 TEO. Further, it is undisputed TEO is a dissolved corporation.  
25 TEO dissolved over ten years before any CAO was issued or  
26 remediation was undertaken. TEO did not and does not have the

1 physical or legal capacity to comply with the CAOs. As a  
2 result thereof, TEO is not under an obligation to do so.)

3 39. Whether or not serious consequences flow from failure  
4 to comply with CAOs such as those listed in Undisputed Fact  
5 83, including:

6 a. Being subject to a "regulatory enforcement action,"  
7 including California Water Code Section 13267 letters and  
8 fines? (AmeriPride's Position: Mr. Warner, TEO's expert,  
9 admitted this at his deposition at 55:24-56:12. Capacity is  
10 a legal conclusion, not a fact. Importantly, capacity under  
11 the CAOs most likely would be determined under California law  
12 which provides that dissolution does not impair valid claims  
13 against the corporation which have not been paid or provided  
14 for in the liquidation proceedings. Claims may be asserted  
15 against a dissolved corporation - whether they arise before or  
16 after dissolution - and the corporation remains liable to the  
17 extent of its undistributed assets, including any available  
18 insurance. Calif. Corps. Code. § 2011(a) and Penasquitos, Inc.  
19 v. Sup.Ct., 53 Cal. 3d 1180 (1991). This rule is different  
20 from the capacity rule under Federal Rule of Civil Procedure  
21 17(b) which looks to the law of the state of incorporation.  
22 Importantly: (1) VIS's, Inc. and TEO each had insurance  
23 policies that eventually responded to provide TEO a defense in  
24 this civil action; (2) VIS, Inc. and TEO are insured on  
25 policies issued to Petrolane, Inc. by members of the ACE  
26 Insurance Group ("ACE"), the American International Group



1 ("AIG"), and Lloyds of London (collectively "TEO's Insurers");  
2 (3) TEO's Insurers had notice of this civil action since, at  
3 the latest, January 31, 2002 (Dkt. 660-5 at 2); (4) on  
4 September 4, 2007, TEO acknowledged that claims had been  
5 tendered to insurers, allowing them to enter an appearance for  
6 TEO to prevent entry of default against TEO (Dkt. 649); (5) one  
7 of TEO's insurers, ACE, informed this Court of its involvement  
8 in the claims against VIS, Inc. and TEO on June 1, 2007, when  
9 ACE's counsel, Berman & Aiwasian, filed a "Statement of  
10 Position Re: Joint Motion for Judgment, Approval of Settlement  
11 and Entry of Contribution Bar" (Dkt 622); (6) by no later than  
12 October 2003, Berman & Aiwasian was representing ACE in  
13 connection with the claims in this civil action (Dkt. 606-5 at  
14 4); and, (7) on August 11, 2008, TEO's current counsel, the  
15 Wilson Elser firm, attended a hearing on AmeriPride's Motion  
16 to set Pretrial Conference and Trial Dates (see Dkt. 663; Dkt.  
17 666). The Wilson Elser firm was hired by TEO's insurers. (See  
18 Dkt. 672-1 at 3.) TEO's Position: The issue of insurance is  
19 irrelevant. The insurers never were, or could they, be named  
20 in any order related to the Site or in any litigation related  
21 to the Site. The insurers never owed any duty to AmeriPride  
22 to investigate or remediate the Site. In the case of VIS,  
23 Inc., it did not exist at the time any CAO listing VIS, Inc.  
24 was issued. It is undisputed VIS, Inc. was merged with  
25 Automotive Repairs in 1990, which subsequently merged with TEO  
26 in 1991. As a result of the merger, VIS, Inc., as a separate



1 entity, ceased to exist. The Board never named the corporate  
2 successor. Moreover, TEO was never named or listed as a party  
3 in any of the CAOs listing VIS, Inc. Nor did the Water Board  
4 ever institute an enforcement action against TEO. Further, it  
5 is undisputed TEO is a dissolved corporation. TEO dissolved  
6 over ten years before any CAO was issued or remediation was  
7 undertaken. TEO did not and does not have the physical or  
8 legal capacity to comply with the CAOs. As a result thereof,  
9 TEO is not under an obligation to do so.)

10 b. Being "subject to fines and ultimately it can be a  
11 criminal offense"?

12 (AmeriPride's Position: TEO's expert, Mr. Kavanaugh, admitted  
13 this at his deposition at 32:23-33:2. Capacity is a legal  
14 conclusion, not a fact. Importantly, capacity under the CAOs  
15 most likely would be determined under California law which  
16 provides that dissolution does not impair valid claims against  
17 the corporation which have not been paid or provided for in the  
18 liquidation proceedings. Claims may be asserted against a  
19 dissolved corporation - whether they arise before or after  
20 dissolution - and the corporation remains liable to the extent  
21 of its undistributed assets, including any available insurance.  
22 Calif. Corps. Code. § 2011(a) and Penasquitos, Inc. v. Sup.Ct.,  
23 53 Cal. 3d 1180 (1991). This rule is different from the  
24 capacity rule under Federal Rule of Civil Procedure 17(b) which  
25 looks to the law of the state of incorporation. Importantly:  
26 (1) VIS's, Inc. and TEO each had insurance policies that

1 eventually responded to provide TEO a defense in this civil  
2 action; (2) VIS, Inc. and TEO are insured on policies issued  
3 to Petrolane, Inc. by members of the ACE Insurance Group  
4 ("ACE"), the American International Group ("AIG"), and Lloyds  
5 of London (collectively "TEO's Insurers"); (3) TEO's Insurers  
6 had notice of this civil action since, at the latest, January  
7 31, 2002 (Dkt. 660-5 at 2); (4) on September 4, 2007, TEO  
8 acknowledged that claims had been tendered to insurers,  
9 allowing them to enter an appearance for TEO to prevent entry  
10 of default against TEO (Dkt. 649); (5) one of TEO's insurers,  
11 ACE, informed this Court of its involvement in the claims  
12 against VIS, Inc. and TEO on June 1, 2007, when ACE's counsel,  
13 Berman & Aiwasian, filed a "Statement of Position Re: Joint  
14 Motion for Judgment, Approval of Settlement and Entry of  
15 Contribution Bar" (Dkt 622); (6) by no later than October 2003,  
16 Berman & Aiwasian was representing ACE in connection with the  
17 claims in this civil action (Dkt. 606-5 at 4); and, (7) on  
18 August 11, 2008, TEO's current counsel, the Wilson Elser firm,  
19 attended a hearing on AmeriPride's Motion to set Pretrial  
20 Conference and Trial Dates (see Dkt. 663; Dkt. 666). The  
21 Wilson Elser firm was hired by TEO's insurers. (See Dkt. 672-1  
22 at 3.) TEO's Position: The issue of insurance is irrelevant.  
23 The insurers never were, or could they, be named in any order  
24 related to the Site or in any litigation related to the Site.  
25 The insurers never owed any duty to AmeriPride to investigate  
26 or remediate the Site. In the case of VIS, Inc., it did not

1 exist at the time any CAO listing VIS, Inc. was issued. It is  
2 undisputed VIS, Inc. was merged with Automotive Repairs in  
3 1990, which subsequently merged with TEO in 1991. As a result  
4 of the merger, VIS, Inc., as a separate entity, ceased to  
5 exist. The Board never named the corporate successor.  
6 Moreover, TEO was never named or listed in any of the CAOs  
7 listing VIS, Inc. Further, it is undisputed TEO is a dissolved  
8 corporation. TEO dissolved over ten years before any CAO was  
9 issued or remediation was undertaken. TEO did not and does not  
10 have the physical or legal capacity to comply with the CAOs.  
11 As a result thereof, TEO is not under an obligation to do so.)

12 40. Whether or not TEO, as successor to VIS, Inc., is  
13 liable under each of the CAOs listed in Undisputed Fact 83?  
14 (AmeriPride's Position: In its opposition to AmeriPride's  
15 summary judgment motion, TEO admitted this fact. (Dkt. 715  
16 25-31.) In addition, there is other evidence that supports  
17 this fact. (Dkt. 698-7 14, Ex. H at 1, Ex. I at 1, Ex. J at  
18 1, Ex. K at 1, and Ex. L at 1; Dkt. 697 6; Dkt. 125 at  
19 1:24-26; Dkt. 735 at 9, n. 5.) Capacity is a legal conclusion,  
20 not a fact. Importantly, capacity under the CAOs most likely  
21 would be determined under California law which provides that  
22 dissolution does not impair valid claims against the  
23 corporation which have not been paid or provided for in the  
24 liquidation proceedings. Claims may be asserted against a  
25 dissolved corporation - whether they arise before or after  
26 dissolution - and the corporation remains liable to the extent

1 of its undistributed assets, including any available insurance.  
2 Calif. Corps. Code. § 2011(a) and *Penasquitos, Inc. v. Sup.Ct.*,  
3 53 Cal. 3d 1180 (1991). This rule is different from the  
4 capacity rule under Federal Rule of Civil Procedure 17(b) which  
5 looks to the law of the state of incorporation. Importantly:  
6 (1) VIS's, Inc. and TEO each had insurance policies that  
7 eventually responded to provide TEO a defense in this civil  
8 action; (2) VIS, Inc. and TEO are insured on policies issued  
9 to Petrolane, Inc. by members of the ACE Insurance Group  
10 ("ACE"), the American International Group ("AIG"), and Lloyds  
11 of London (collectively "TEO's Insurers"); (3) TEO's Insurers  
12 had notice of this civil action since, at the latest, January  
13 31, 2002 (Dkt. 660-5 at 2); (4) on September 4, 2007, TEO  
14 acknowledged that claims had been tendered to insurers,  
15 allowing them to enter an appearance for TEO to prevent entry  
16 of default against TEO (Dkt. 649); (5) one of TEO's insurers,  
17 ACE, informed this Court of its involvement in the claims  
18 against VIS, Inc. and TEO on June 1, 2007, when ACE's counsel,  
19 Berman & Aiwasian, filed a "Statement of Position Re: Joint  
20 Motion for Judgment, Approval of Settlement and Entry of  
21 Contribution Bar" (Dkt 622); (6) by no later than October 2003,  
22 Berman & Aiwasian was representing ACE in connection with the  
23 claims in this civil action (Dkt. 606-5 at 4); and, (7) on  
24 August 11, 2008, TEO's current counsel, the Wilson Elser firm,  
25 attended a hearing on AmeriPride's Motion to set Pretrial  
26 Conference and Trial Dates (see Dkt. 663; Dkt. 666). The

1 Wilson Elser firm was hired by TEO's insurers. (See Dkt. 672-1  
2 at 3.) TEO's Position: The issue of insurance is irrelevant.  
3 The insurers never were, or could they, be named in any order  
4 related to the Site or in any litigation related to the Site.  
5 The insurers never owed any duty to AmeriPride to investigate  
6 or remediate the Site. In the case of VIS, Inc., it did not  
7 exist at the time any CAO listing VIS, Inc. was issued. It is  
8 undisputed VIS, Inc. was merged with Automotive Repairs in  
9 1990, which subsequently merged with TEO in 1991. Since VIS  
10 was not subject to the CAO, its successor cannot be. Moreover,  
11 TEO was never named or listed in any of the CAOs listing VIS,  
12 Inc. Further, it is undisputed TEO is a dissolved corporation.  
13 TEO dissolved over ten years before any CAO was issued or  
14 remediation was undertaken. TEO did not and does not have the  
15 physical or legal capacity to comply with the CAOs. Pursuant  
16 to 8 Del. Code § 279 the receiver has authority to pursue and  
17 act only with respect to available insurance coverage and to  
18 defend in the action. As a result thereof, TEO is not under  
19 an obligation to do so.)

20 **ix. Whether the Distribution of PCE Contamination at the Site**  
21 **Consistent With DNAPL PCE as the Only or Primary Source?**

22 41. Whether or not "residual phase" for DNAPL PCE means  
23 that you have pure chemical contaminant like DNAPL PCE, for  
24 example, in the subsurface that's acting as a continuous  
25 source? (AmeriPride's Position: This fact is relevant to show  
26 the relative difficulty of remediation the DNAPL PCE releases



1 from TEO's predecessor, VIS, Inc. Specifically, Gore Factor (3),  
2 cited in AmeriPride's response to Disputed Fact 20 is: "(3)  
3 degree of toxicity of hazardous waste." TEO admitted this fact  
4 in its answer to AmeriPride's 4th Amended Complaint. (Dkt. 756  
5 14 at 3; Warner Depo. at 31:11-16.) TEO's Position: TEO  
6 objects on the basis of relevance. This purported "fact" does  
7 not relate or correspond to an element of a relevant cause of  
8 action, as required by the Status (Pretrial Scheduling)  
9 Conference Order. Moreover, whether and what effect DNAPL PCE  
10 has is subject to a myriad of site specific conditions.)

11 42. Whether or not "continuous source" means if you have  
12 pure PCE DNAPL in the subsurface, it will it will keep  
13 contributing mass to the subsurface environment? (AmeriPride's  
14 Position: This fact is relevant to show the relative  
15 difficulty of remediation the DNAPL PCE releases from TEO's  
16 predecessor, VIS, Inc. Specifically, Gore Factor (3), cited in  
17 AmeriPride's response to Disputed Fact 20 is: "(3) degree of  
18 toxicity of hazardous waste." TEO admitted this fact in its  
19 answer to AmeriPride's 4th Amended Complaint. (Dkt. 756 14  
20 at 3; Warner Depo. at 31:17-21.) TEO's Position: TEO objects  
21 on the basis of relevance. This purported "fact" does not  
22 relate or correspond to an element of a relevant cause of  
23 action, as required by the Status (Pretrial Scheduling)  
24 Conference Order. Moreover, whether and what effect DNAPLE PCE  
25 hse is subject to a myriad of site specific conditions.)

26 43. Whether or not PCE vapor plumes can cover really



1 large areas, hundreds of feet in cases, oftentimes with  
2 significantly high concentrations around the vadose zone  
3 release areas and detectable concentrations pretty good  
4 distances away? (AmeriPride's Position: TEO admitted this  
5 fact in its answer to AmeriPride's 4th Amended Complaint.  
6 (Dkt. 756 30 at 5; Warner Depo. at 177:1-4 and 177:9-22.) Mr.  
7 Warner, TEO's expert, testified this process is happening at  
8 this Site. TEO's Position: This is a hypothetical issue,  
9 which depends on the conditions actually represent at a site  
10 and has no relevancy to this Site. Further the terms  
11 "significantly high concentrations" and "pretty good distances"  
12 are vague.)

13 44. Whether or not the soil vapors from residual DNAPL  
14 go different directions from the groundwater? (AmeriPride's  
15 Position: This fact is relevant to show the relative  
16 difficulty of remediation the DNAPL PCE releases from TEO's  
17 predecessor, VIS, Inc. Specifically, Gore Factor (3), cited in  
18 AmeriPride's response to Disputed Fact 20 is: "(3) degree of  
19 toxicity of hazardous waste." Mr. Warner, TEO's expert,  
20 testified that this process is happening at this Site. TEO  
21 admitted this fact in its answer to AmeriPride's 4th Amended  
22 Complaint. (Dkt. 756 30 at 5; Warner Depo. at 176:6-8.)  
23 TEO's Position: The meaning of this fact is unclear and vague,  
24 however, TEO does not dispute soil vapor can move in different  
25 directions.)

26 45. Whether or not typically there will be a vapor plume

1 that's sort of concentric around source areas and then a  
2 groundwater plume that might be below that that heads off in  
3 one direction? (AmeriPride's Position: This fact is relevant  
4 to show the relative difficulty of remediation the DNAPL PCE  
5 releases from TEO's predecessor, VIS, Inc. Specifically, Gore  
6 Factor (3), cited in AmeriPride's response to Disputed Fact 20  
7 is: "(3) degree of toxicity of hazardous waste." Mr. Warner,  
8 TEO's expert, testified that this process is happening at this  
9 Site. TEO admitted this fact in its answer to AmeriPride's 4th  
10 Amended Complaint. (Dkt. 756 30 at 5; Warner Depo. at  
11 176:9-25.) TEO's Position: The meaning of this fact is  
12 unclear and vague, however, TEO does not dispute soil vapor can  
13 move in different directions.)

14 46. Whether or not, where there is a cover on the surface  
15 of a site there is a capping effect where there's not as much  
16 vapors going out to the atmosphere; the vapors spread out more  
17 generally in the subsurface? (AmeriPride's Position: This  
18 fact is relevant to show the relative difficulty of remediation  
19 the DNAPL PCE releases from TEO's predecessor, VIS, Inc.  
20 Specifically, Gore Factor (3), cited in AmeriPride's response  
21 to Disputed Fact 20 is: "(3) degree of toxicity of hazardous  
22 waste." Mr. Warner, TEO's expert, testified that this process  
23 is happening at this Site. TEO admitted this fact in its  
24 answer to AmeriPride's 4th Amended Complaint. (Dkt. 756 30  
25 at 5; Warner Depo. at 179:16-22.) TEO's Position: This is a  
26 hypothetical issue, which depends on the conditions actually

1 present at a site.)

2 47. Whether or not at the Site is there a big cap where  
3 the Site is paved for a long way that would tend to make the  
4 vapor plume bigger than if there was no cap at the Site?  
5 (AmeriPride's Position: This fact is relevant to show the  
6 relative difficulty of remediation the DNAPL PCE releases from  
7 TEO's predecessor, VIS, Inc. Specifically, Gore Factor (3),  
8 cited in AmeriPride's response to Disputed Fact 20 is: "(3)  
9 degree of toxicity of hazardous waste." Mr. Warner, TEO's  
10 expert, testified that there is a big cap at this Site. TEO  
11 admitted this fact in its answer to AmeriPride's 4th Amended  
12 Complaint. (Dkt. 756 30 at 5; Warner Depo. at 179:23-180:7.)  
13 TEO's Position: This is a hypothetical issue, which depends  
14 on the conditions actually present at a site.)

15 48. Whether or not the DNAPL PCE releases by TEO's  
16 corporate predecessor, VIS, Inc., will contribute mass in the  
17 vapor phase as the vapors move out and away from the DNAPL PCE?  
18 (AmeriPride's Position: TEO admitted this fact in its answer  
19 to AmeriPride's 4th Amended Complaint. (Dkt. 756 14 at 3;  
20 Warner Depo. at 31:22-32:3.) TEO's Position: AmeriPride  
21 misconstrues the expert testimony it cites to support this  
22 proposition. Jim Warner testified generally regarding the  
23 definitions of continuous source and residual PCE. He did not  
24 connect this process to any releases by VIS, Inc. Moreover,  
25 any contribution by DNAPL PCE is entirely dependent on site  
26 specific conditions.)

1        49. Whether or not as PCE vapors move away from an area,  
2 there will be a redistribution of chemicals where more will  
3 move into the vapor phase? (AmeriPride's Position: TEO  
4 admitted this fact in its answer to AmeriPride's 4th Amended  
5 Complaint. (Dkt. 756 14 at 3; Warner Depo. at 31:22-32:3.)  
6 TEO's Position: AmeriPride misconstrues the expert testimony  
7 it cites to support this proposition. Jim Warner testified  
8 generally regarding the definitions of continuous source and  
9 residual PCE. He did not connect this process to any releases  
10 by VIS, Inc. Moreover, any contribution by DNAPL PCE is  
11 entirely dependent on site specific conditions.)

12        50. Whether or not the distribution of PCE in groundwater  
13 at the Site is consistent with the only or primary source of  
14 contamination being DNAPL PCE released from dry cleaning  
15 operations at the Facility? (AmeriPride's Position: The  
16 highest concentrations of PCE are present in shallow  
17 groundwater immediately underlying and downgradient of the  
18 highest concentrations of PCE present in the vadose zone.  
19 Lower concentrations of PCE also are present in groundwater to  
20 the west of the dry cleaning operations and are consistent with  
21 the reported disposal of waste sludges by VIS, Inc. as part of  
22 dry cleaning operations. (Declaration of Anne Farr ("Farr  
23 Decl.") 38, Dkt. 698-5 38 at 9-10.) TEO's Position: As  
24 reiterated throughout its Opposition to AmeriPride's Motion for  
25 Summary Judgment, TEO's position is that DNAPL spills are not  
26 the only or the primary source of contamination at the Site.

1 Mr. Warner looked to the failure to find significant DNAPL in  
2 the soil, and the presence of chemicals that are unique to  
3 AmeriPride's waste water as proof that the primary source of  
4 the groundwater contamination was released due to the  
5 operations of Ameripride. Moreover, AmeriPride has stipulated  
6 that their release of PCE contaminated wastewater caused  
7 contamination at the Huhtamaki property.)

8 51. Whether or not, absent the presence of these low  
9 concentrations of PCE to the west of the dry cleaning  
10 operations, the Site still would have required the same  
11 magnitude of investigation and remediation consistent with the  
12 only or primary source of contamination being DNAPL PCE  
13 released from dry cleaning operations at the Facility?  
14 (AmeriPride's Position: The highest concentrations of PCE are  
15 present in shallow groundwater immediately underlying and  
16 downgradient of the highest concentrations of PCE present in  
17 the vadose zone. Lower concentrations of PCE also are present  
18 in groundwater to the west of the dry cleaning operations and  
19 are consistent with the reported disposal of waste sludges by  
20 VIS, Inc. as part of dry cleaning operations. (Declaration of  
21 Anne Farr ("Farr Decl.") 38, Dkt. 698-5 38 at 9-10.) TEO's  
22 Position: This fact is not supported by the evidence and  
23 attempts to make a generalization about the condition of the  
24 Site, when in actuality conditions at the Site vary. As  
25 reiterated throughout its Opposition to AmeriPride's Motion for  
26 Summary Judgment, TEO's position is that DNAPL spills are not



1 the only or the primary source of contamination at the Site.  
2 Mr. Warner looked to the failure to find significant DNAPL in  
3 the soil, and the presence of chemicals that are unique to  
4 AmeriPride's waste water as proof that the primary source of  
5 the groundwater contamination was released due to the  
6 operations of AmeriPride. Moreover, AmeriPride has stipulated  
7 that their release of PCE contaminated wastewater caused  
8 contamination at the Huhtamaki property.)

9 52. Whether or not releases of PCE in wastewater by  
10 AmeriPride would require remediation? (AmeriPride's Position:  
11 AmeriPride's expert, Dr. Anne Farr, has performed calculations  
12 that demonstrate that the vast majority of the dissolved PCE  
13 in the groundwater at the Site is the result of PCE dissolving  
14 into the groundwater from the DNAPL PCE present in the  
15 subsurface from releases of DNAPL PCE during the period of dry  
16 cleaning operations at the Facility. Accordingly, Dr. Farr  
17 opines that it is very unlikely that the investigation and  
18 remediation would have been required if not for the DNAPL PCE  
19 releases. (Farr Decl. 2, 37, 39 and 40, Ex. A at 1, 14, Dkt.  
20 698-5 2, 37, 39 and 40, Ex. A at 16, 29.) TEO's Position:  
21 Dr. Farr's calculations are unreliable and are contradicted by  
22 objective data. Further, AmeriPride's wastewater added PCE to  
23 the soil and moved the PCE already in the soil, which is a  
24 release. AmeriPride has stipulated that wastewater released  
25 from it broken pipe has contaminated Huhtamaki's property.)

26 53. Whether or not the potential PCE contribution from

1 AmeriPride's industrial wastewater releases is exceedingly  
2 small, even in a worst case scenario? (AmeriPride's Position:  
3 According to AmeriPride's expert, Dr. Anne Farr, the reasonable  
4 maximum and worst case estimates of total mass of PCE that may  
5 have been released to the subsurface from VIS, Inc.' s  
6 industrial laundry operations and AmeriPride' s industrial  
7 laundry operations can be compared to the total mass of PCE  
8 removed from the Site. Dr. Farr calculates that: (a) The  
9 reasonable maximum contribution of PCE from AmeriPride's  
10 wastewater operations to the Site contamination is less than  
11 0.3% (5.7 kilograms/1,852 kilograms) of the total PCE released  
12 at the Site. (Id. at 15, Dkt. 729-2 at 21, as corrected in  
13 Farr Depo. at 66:14-68:13.); (b) VIS's reasonable maximum  
14 contribution of PCE from wastewater operations to the Site  
15 contamination is less than 0.3% (5.2 kilograms/1,852 kilograms)  
16 of the total PCE released at the Site; (c) The worst case  
17 contribution of PCE from AmeriPride's industrial laundering  
18 operation is less than 1.8% (33.9 kilograms/1,852 kilograms)  
19 of the total PCE released at the Site; and, (d) VIS's worst  
20 case contribution of PCE from wastewater releases is less than  
21 4.1% (76.7 kilograms/1,852 kilograms) of the total PCE at the  
22 Site. (Farr Expert Rebuttal Report at 15, Dkt. 729-2 at 21,  
23 as corrected in Anne Farr's April 29, 2011 deposition ("Farr  
24 Depo.") at 66:14-68:13.) TEO's Position: This is not a plain  
25 concise factual statement. Further, it ignores facts  
26 concerning the levels of contamination in AmeriPride's

1 wastewater and relies on the unreliable opinion of Dr. Farr.  
2 As reiterated throughout its Opposition to AmeriPride's Motion  
3 for Summary Judgment, DNAPL spills are not the only or the  
4 primary source of contamination at the Site and VIS, Inc. was  
5 not the only source of DNAPLs. They were also in AmeriPride's  
6 wastewater. Mr. Warner looked to the failure to find  
7 significant DNAPL in the soil, and the presence of chemicals  
8 that are unique to AmeriPride's wastewater as proof that the  
9 primary source of the groundwater contamination is released  
10 from the operations of Ameripride.) Moreover, AmeriPride has  
11 stipulated that their release of PCE contaminated wastewater  
12 caused contamination at the Huhtamaki property.)

13 **b. Facts Proposed by TEO, But Disputed by AmeriPride**

14 54. Whether or not, in November 2009, the Delaware Court  
15 of Chancery appointed a receiver pursuant to 8 Del. C. § 279  
16 of and for TEO with authority to pursue and act only with  
17 respect to available insurance coverage and to defend in the  
18 action? (TEO's Position: It is undisputed the receiver was  
19 appointed of and for TEO under 8 Del. C. § 279. The Court's  
20 Memorandum Opinion appointing the receiver states: "By its own  
21 terms, § 279 limits the power of an appointed receiver. "Such  
22 receivers may 'take charge of the corporation's property, and  
23 . . . collect the debts and property due and belonging to the  
24 corporation' for the purpose of prosecuting and defending  
25 lawsuits." Order p. 5 quoting § 279.) It is undisputed that  
26 TEO has no property other than potential rights under certain

1 insurance policies. AmeriPride's Position: This is not what  
2 the order says. The order appointing the receiver states in  
3 pertinent part: "Receiver has no obligation to pay for the  
4 defense of TEO or for any judgment against TEO in the Federal  
5 Action, and Receiver shall not control the defense of TEO or  
6 any judgment or settlement of claims made against TEO in the  
7 Federal Action, but rather, the counsel defending TEO shall  
8 control the defense of TEO and any judgment or settlement of  
9 claims made against TEO in the Federal Action." The order  
10 appointing the receiver does not give the receiver the  
11 authority to defend this civil action. Instead, the order  
12 squarely places these burdens on counsel representing TEO and  
13 TEO's insurers who hired counsel for TEO. The language of this  
14 order was negotiated and approved by Delaware counsel for TEO  
15 who also was paid by TEO's insurers.)

16 55. Whether or not a unity of interest and ownership  
17 between Petrolane and VIS, Inc. existed such that any  
18 individuality and separateness between Petrolane and VIS, Inc.  
19 ceased, and VIS, Inc. was the alter ego of Petrolane up to and  
20 including 1990? (TEO's Position: AmeriPride alleged this fact  
21 in its Second Amended Complaint. It is irrelevant the fact was  
22 not alleged in AmeriPride's Fourth Amended Complaint. Since  
23 AmeriPride accepted settlement monies based on a Court approved  
24 agreement, AmeriPride is estopped from denying the relationship  
25 between VIS and Petrolane. Further, ample evidence supports  
26 this factual issue. Among other things, the two entities had

1 interlocking boards, Petrolane controlled the operations of  
2 VIS, and Petrolane directly received the sales proceeds for  
3 VIS. AmeriPride's Position: AmeriPride is not bound by the  
4 allegations of its Second Amended Complaint. The evidence  
5 developed during discovery does not prove this alleged fact.  
6 AmeriPride's operative complaint, the 4th Amended Complaint has  
7 no such allegation. In fact, there is no operative complaint  
8 filed by the parties that supports this claim. AmeriPride's  
9 4th Amended Complaint makes no such claim. Moreover, when the  
10 Court approved the settlement agreements between Chromalloy and  
11 AmeriPride, Petrolane and AmeriPride, and Huhtamaki and  
12 AmeriPride in 2007, the Court made clear that neither VIS, Inc.  
13 nor TEO were parties to the settlement agreements, and the  
14 Court expressly did not dismiss AmeriPride's claims against  
15 VIS, Inc. and TEO. (Dkt 638 at 2, n. 1 and 8.))

16 56. Whether or not the unity of interests Petrolane and  
17 VIS shared included overlapping officers, directors, and board  
18 members, shared pension plans, shared payroll, and assignment  
19 of liabilities? (TEO's Position: AmeriPride alleged this fact  
20 in its Second Amended Complaint. It is irrelevant the fact was  
21 not alleged in AmeriPride's Fourth Amended Complaint. Since  
22 AmeriPride accepted settlement monies based on a Court approved  
23 agreement, AmeriPride is estopped from denying the relationship  
24 between VIS and Petrolane. Further, ample evidence supports  
25 this factual issue. Among other things, the two entities had  
26 interlocking boards, Petrolane controlled the operations of



1 VIS, and Petrolane directly received the sales proceeds for  
2 VIS. AmeriPride's Position: AmeriPride is not bound by the  
3 allegations of its Second Amended Complaint. The evidence  
4 developed during discovery does not prove this alleged fact.  
5 AmeriPride's operative complaint, the 4th Amended Complaint has  
6 no such allegation. In fact, there is no operative complaint  
7 filed by the parties that supports this claim. AmeriPride's  
8 4th Amended Complaint makes no such claim. In fact, there is  
9 no operative complaint filed by the parties that supports this  
10 claim. AmeriPride's 4th Amended Complaint makes no such claim.  
11 The evidence does not support this claim.)

12 57. Whether or not VIS, Inc. employees were clear that  
13 Petrolane was the owner of and controlled the Facility? (TEO's  
14 Position: Irrespective of whether Petrolane held legal title  
15 as the owner of the Facility, the evidence establishes that  
16 Petrolane's conduct and control over the Facility gave VIS,  
17 Inc.'s employees the impression that Petrolane owned and  
18 controlled the Facility. AmeriPride's Position: AmeriPride  
19 is aware of no evidence that Petrolane ever owned the Facility  
20 and this purported fact is not relevant to any issues in this  
21 case. The alleged fact is irrelevant and, as explained in  
22 TEO's Position, speculative at best.)

23 58. Whether or not Petrolane received \$2.6 million in  
24 accounts receivable of VIS, Inc. as a result of the sale of  
25 VIS, Inc.? (TEO's Position: The fact is supported by evidence  
26 and relevant to establishing a unity of interests between

1 Petrolane and VIS, Inc. AmeriPride's Position: This alleged  
2 fact may prove that a shareholder who sells assets gets paid  
3 for those assets, but it does not establish a "unity of  
4 interest." This fact is not relevant to any issue in the  
5 case.)

6 59. Whether or not, when the RWQCB issued Cleanup and  
7 Abatement Orders naming VIS, Inc. as a Discharger, TEO was and  
8 had been a dissolved corporation for over a decade? (TEO's  
9 Position: It is undisputed TEO dissolved in 1992. It is also  
10 undisputed that the RWQCB took regulatory control over the site  
11 investigation in 2002. It is further undisputed that RWQCB did  
12 not issue a Cleanup and Abatement Order until 2003, which is  
13 over a decade since TEO dissolved in 1992. AmeriPride's  
14 Position: Argument. AmeriPride will agree that: "TEO  
15 dissolved under Delaware law in 1992." (See Dkt. 677 at 9.)  
16 In Undisputed Fact 5, the parties already agreed that a  
17 receiver was appointed under 8 Del. Code Section 279 - this  
18 occurred on November 30, 2009 in the Delaware Chancery Court  
19 (Dkt. 682 at 1), where the order was not stayed pending appeal  
20 to the Delaware Supreme Court where it was affirmed on June 24,  
21 2010. (Dkt. 689 at 2.))

22 60. Whether or not, after its dissolution, TEO did not  
23 and does not have the legal or physical capacity to respond to  
24 any of the RWQCB Cleanup and Abatement Orders? (TEO's  
25 Position: TEO dissolved over ten years before any CAO was  
26 issued or remediation was undertaken. TEO did not and does not

1 have the physical or legal capacity to comply with the CAOs.  
2 Pursuant to 8 Del. Code § 279 the receiver has authority to  
3 pursue and act only with respect to available insurance  
4 coverage and to defend in the action. That is the entirety of  
5 its powers and they do not include the ability to respond to  
6 the CAO. As a result thereof, TEO is not under an obligation  
7 to do so. The issue of insurance is irrelevant. The insurers  
8 never were, or could they, be named in any order related to the  
9 Site or in any litigation related to the Site. The insurers  
10 never owed any duty to AmeriPride to investigate or remediate  
11 the Site. AmeriPride's Position: This is a legal conclusion,  
12 not a fact. Importantly, capacity under the CAOs most likely  
13 would be determined under California law which provides that  
14 dissolution does not impair valid claims against the  
15 corporation which have not been paid or provided for in the  
16 liquidation proceedings. Claims may be asserted against a  
17 dissolved corporation - whether they arise before or after  
18 dissolution - and the corporation remains liable to the extent  
19 of its undistributed assets, including any available insurance.  
20 Calif. Corps. Code. § 2011(a) and Penasquitos, Inc. v. Sup.Ct.,  
21 53 Cal. 3d 1180 (1991). This rule is different from the  
22 capacity rule under Federal Rule of Civil Procedure 17(b) which  
23 looks to the law of the state of incorporation. Importantly:  
24 (1) VIS's, Inc. and TEO each had insurance policies that  
25 eventually responded to provide TEO a defense in this civil  
26 action; (2) VIS, Inc. and TEO are insured on policies issued

1 to Petrolane, Inc. by members of the ACE Insurance Group  
2 ("ACE"), the American International Group ("AIG"), and Lloyds  
3 of London (collectively "TEO's Insurers"); (3) TEO's Insurers  
4 had notice of this civil action since, at the latest, January  
5 31, 2002 (Dkt. 660-5 at 2); (4) on September 4, 2007, TEO  
6 acknowledged that claims had been tendered to insurers,  
7 allowing them to enter an appearance for TEO to prevent entry  
8 of default against TEO (Dkt. 649); (5) one of TEO's insurers,  
9 ACE, informed this Court of its involvement in the claims  
10 against VIS, Inc. and TEO on June 1, 2007, when ACE's counsel,  
11 Berman & Aiwasian, filed a "Statement of Position Re: Joint  
12 Motion for Judgment, Approval of Settlement and Entry of  
13 Contribution Bar" (Dkt 622); (6) by no later than October 2003,  
14 Berman & Aiwasian was representing ACE in connection with the  
15 claims in this civil action (Dkt. 606-5 at 4); and, (7) on  
16 August 11, 2008, TEO's current counsel, the Wilson Elser firm,  
17 attended a hearing on AmeriPride's Motion to set Pretrial  
18 Conference and Trial Dates (see Dkt. 663; Dkt. 666). The  
19 Wilson Elser firm was hired by TEO's insurers. (See Dkt. 672-1  
20 at 3.))

21 61. Whether or not, without a driving force, DNAPL could  
22 not have reached below the top tier of soil? (TEO's Position:  
23 DNAPL PCE of the type and amount spilled by VIS, Inc. move  
24 slowly through the soil absent something to push it deeper.  
25 Due to the amount of DNAPL PCE allegedly released and the large  
26 surface that it would have covered, the DNAPLs would have only

1 slightly penetrated the subsurface. Given that it is  
2 approximately 70 feet to groundwater, it required the water  
3 from AmeriPride's wastewater system to drive the contamination  
4 from the DNAPLs to groundwater. AmeriPride's Position:  
5 Undisputed Fact 46 is more accurate. Language disputed because  
6 the DNAPL itself has a driving force and "top tier of soil" is  
7 vague and it is undisputed that vapors from residual DNAPL in  
8 the vadose zone can cause groundwater contamination, even when  
9 groundwater is a long way - 70 to 75 feet or more - below  
10 ground surface. In fact, TEO's expert, Mr. Warner admits  
11 releases have DNAPL PCE during VIS Inc.'s operations at the  
12 Facility have resulted in groundwater contamination.)

13 62. Whether or not during VIS, Inc.'s operation of the  
14 Facility, there was not a sufficient volume of DNAPL released  
15 at the surface in any one instance or in aggregate to maintain  
16 a driving downward force and cause the DNAPL to reach  
17 groundwater? (TEO's Position: DNAPL PCE of the type and  
18 amount spilled by VIS, Inc. moves slowly through the soil  
19 absent something to push it deeper. Due to the amount of DNAPL  
20 PCE allegedly released and the large surface that it would have  
21 covered, the DNAPLs would have only slightly penetrated the  
22 subsurface. Given that it is approximately 70 feet to  
23 groundwater, it required the water from AmeriPride's wastewater  
24 system to drive the contamination from the DNAPLs to  
25 groundwater. AmeriPride's Position: Disputed because the  
26 DNAPL itself has a driving force which AmeriPride's expert, Dr.



1 Farr, opined was sufficient to cause it to reach groundwater.  
2 In addition, TEO's expert, Mr. Warner admits releases of DNAPL  
3 PCE during VIS, Inc.'s operations at the Facility have resulted  
4 in groundwater contamination.)

5 63. Whether or not the distribution of PCE in soil vapor  
6 and soil is associated with both former dry cleaning areas and  
7 the footprint of the wastewater conveyance and treatment  
8 system, including some overlapping areas where the former dry  
9 cleaning operations and the wastewater trench/pipelines are  
10 near one another? (TEO's Position: This is the subject of a  
11 dispute between experts. AmeriPride's Position: Agree there  
12 is a dispute between experts).

13 64. Whether or not other VOCs and petroleum hydrocarbons  
14 have been detected at significant concentrations relative to  
15 PCE in soil vapor and soil in association with the wastewater  
16 conveyance and treatment system? (TEO's Position: This is the  
17 subject of a dispute between experts. AmeriPride's Position:  
18 Agree there is a dispute between experts).

19 65. Whether releases of both DNAPL PCE and wastewater  
20 with dissolve PCE have occurred in overlapping areas within and  
21 near the washroom, and in combination have resulted in the PCE  
22 plume at the site? (TEO's Position: This is the subject of  
23 a dispute between experts. AmeriPride's Position: Agree there  
24 is a dispute between experts).

25 66. Whether the soil vapor and soil data demonstrate that  
26 the highest concentrations of PCE in the vadose zone are

1 associated with both the former dry cleaning areas and the  
2 wastewater trench, with overlapping areas of contamination  
3 resulting from releases from both types of sources and their  
4 adjacent positions to one another? (TEO's Position: This is  
5 the subject of a dispute between experts. AmeriPride's  
6 Position: Agree there is a dispute between experts).

7       67. Whether or not the following parties to the  
8 consolidated actions AmeriPride Services, Inc v. Valley  
9 Industrial Services, Inc. and Huhtamaki Foodservice, Inc. v.  
10 AmeriPride Services, Inc. entered various settlement  
11 agreements: (1) AmeriPride, as plaintiff in the AmeriPride  
12 action and as a defendant in the Huhtamaki action; (2) Mission  
13 Linen Supply; (2) Chromalloy American Corporation  
14 ("Chromalloy"), DHM Enterprises, Inc., George Backovich and  
15 Bruce Pennell (the "DHM Parties"); (4) Petrolane Incorporated,  
16 UGI Corporation, AmeriGas Inc., AmeriGas Propane, Inc.,  
17 AmeriGas Propane LP, AmeriGas Partners, L.P., and Texas Eastern  
18 Corporation (collectively "Petrolane"); and (5) Huhtamaki as  
19 plaintiff in the Huhtamaki action? (TEO's Position: This is  
20 an accurate summary of the parties involved. AmeriPride's  
21 Position: Disputed because not all of these parties "entered  
22 various settlement agreements," which is what the alleged fact  
23 says.)

24       68. Whether or not the Chromalloy/AmeriPride settlement  
25 agreement provided that AmeriPride was to be paid \$500,000 over  
26 three years and AmeriPride's right to payment was subject to

1 a right of offset with respect to certain claims against  
2 Chromalloy and included a mutual release of all claims by and  
3 among AmeriPride, Chromalloy and DHM Parties, as well as  
4 dismissal with prejudice of claims by and among Chromalloy and  
5 AmeriPride? (TEO's Position: This is a verbatim quote of the  
6 settlement terms stated in this Court's July 2, 2007 Order  
7 approving the settlement.) AmeriPride's Position: Disputed  
8 as incomplete and misleading for use as an undisputed fact.  
9 AmeriPride will agree to an undisputed fact that it settled  
10 with Chromalloy on the terms set forth in their settlement  
11 agreement, a copy of which already has been provided to the  
12 Court. (See Dkt. 717-12.))

13 69. Whether or not the Petrolane/AmeriPride settlement  
14 required the Petrolane Defendants to pay AmeriPride \$2.75  
15 million in return for which AmeriPride has agreed to release  
16 the Petrolane Defendants from liability. The Petrolane and  
17 AmeriPride settlement includes indemnities by AmeriPride in  
18 favor of the Petrolane Defendants? (TEO's Position: This is  
19 a verbatim quote of the settlement terms stated in this Court's  
20 July 2, 2007 Order approving the settlement.) AmeriPride's  
21 Position: Irrelevant and disputed as incomplete and misleading  
22 for use as an undisputed fact. AmeriPride will agree to an  
23 undisputed fact that it settled with Petrolane on the terms set  
24 forth in their settlement agreement, a copy of which already  
25 has been provided to the Court. (See Dkt. 717-13.))

26 70. Whether or not the Huhtamaki/AmeriPride settlement

1 provided that AmeriPride will pay Huhtamaki \$8.25 million, that  
2 AmeriPride will dismiss its appeal of an extant Cleanup and  
3 Abatement Order issued by the RWQCB, and that AmeriPride will  
4 comply with future RWQCB orders related to PCE emanating from  
5 the AmeriPride property. Huhtamaki has agreed to provide  
6 AmeriPride with access to the Huhtamaki property as necessary  
7 for AmeriPride to comply with the RWQCB orders. Each of the  
8 parties to the Huhtamaki and AmeriPride settlement provided the  
9 other with a release of liability and promises to dismiss the  
10 claims in the Huhtamaki action claims with prejudice? (TEO's  
11 Position: This issue was raised by TEO in its opposition to  
12 AmeriPride's summary judgment motion. Resolution of the issue  
13 was deferred by the Court when it denied the summary judgment  
14 motion on the settlement dollars. This is a verbatim quote of  
15 the settlement terms stated in this Court's July 2, 2007 Order  
16 approving the settlement. AmeriPride's Position: Irrelevant  
17 and disputed as incomplete and misleading for use as an  
18 undisputed fact. In opposition to AmeriPride's summary  
19 judgment motion, TEO claimed that these payments could only be  
20 recovered under CERCLA Section 113(f) because they settled  
21 Huhtamaki's CERCLA Section 107 claims against AmeriPride and  
22 the Court agreed. (Dkt. 735 at 40.) Now, TEO wants to argue  
23 these settlements were for something else. AmeriPride will  
24 agree to an undisputed fact that it settled with Huhtamaki on  
25 the terms set forth in their settlement agreement, a copy of  
26 which already has been provided to the Court. (See Dkt.

1 717-11.))

2 71. Whether or not Huhtamaki's claims against AmeriPride  
3 include damages for damage to their property and business as  
4 well as diminution in value? (TEO's Position: This issue was  
5 raised by TEO in its opposition to AmeriPride's summary  
6 judgment motion. Resolution of the issue was deferred by the  
7 Court when it denied the summary judgment motion on the  
8 settlement dollars. This fact is supported by the causes of  
9 action alleged in Huhtamaki's Complaint. AmeriPride's  
10 Position: Irrelevant and disputed as incomplete and  
11 misleading. In opposition to AmeriPride's summary judgment  
12 motion, TEO claimed that these payments could only be recovered  
13 under CERCLA Section 113(f) because they settled Huhtamaki's  
14 CERCLA Section 107 claims against AmeriPride and the Court  
15 agreed. (Dkt. 735 at 40.) Now, TEO wants to argue these  
16 settlements were for something else. AmeriPride will agree to  
17 an undisputed fact that lists all of Huhtamaki's claims against  
18 AmeriPride, including Huhtamaki's claim against AmeriPride  
19 under CERCLA Section 107 which provided the basis for the  
20 Court's ruling on summary adjudication that the settlement  
21 payment to Huhtamaki could be recovered against TEO under  
22 CERCLA Section 113(f).)

23 72. Whether or not the monies that Huhtamaki and Cal-Am  
24 Water Co. received did not reimburse them for response costs  
25 paid in compliance with the national contingency plan? (TEO's  
26 Position: Payment of monies for which a party seeks



1 contribution under § 113(f) is required to be spent consistent  
2 with the national contingency plan (the "NCP"). The payment  
3 of the monies to Huhtamaki was not consistent with the NCP.)  
4 AmeriPride's Position: Disputed because water replacement  
5 costs are response costs and because a settlement of a CERCLA  
6 Section 107 claim does not require proof of compliance with the  
7 National Contingency Plan, 42 C.F.R. Part 300. In addition,  
8 Huhtamaki had a claim against AmeriPride under CERCLA Section  
9 107 which provided the basis for the Court's ruling on summary  
10 adjudication that the settlement payment to Huhtamaki could be  
11 recovered against TEO under CERCLA Section 113(f).)

12 73. Whether or not anything in the settlement agreement  
13 between Cal-Am Water Co., AmeriPride, and Petrolane limited  
14 AmeriPride's right to seek reimbursement of all or any portion  
15 of the settlement payment from any of its insurers in the  
16 future? (TEO's Position: This issue was raised by TEO in its  
17 opposition to AmeriPride's summary judgment motion. Resolution  
18 of the issue was deferred by the Court when it denied the  
19 summary judgment motion on the settlement dollars. This fact  
20 is a recitation of what the parties' settlement agreement  
21 states. AmeriPride's Position: Irrelevant and disputed as  
22 incomplete and misleading for use as an undisputed fact. In  
23 opposition to AmeriPride's summary judgment motion, TEO claimed  
24 that these payments could only be recovered under CERCLA  
25 Section 113(f) because they settled Huhtamaki's CERCLA Section  
26 107 claims against AmeriPride and the Court agreed. (Dkt. 735

1 at 40.) Now, TEO wants to argue these settlements were for  
2 something else. AmeriPride will agree to an undisputed fact  
3 that it settled with Huhtamaki on the terms set forth in their  
4 settlement agreement.)

5 74. Whether or not AmeriPride has/ had insurance coverage  
6 for the Facility which provided AmeriPride with coverage in  
7 this litigation, other litigation and response to the CAOs?  
8 (TEO's Position: Irrespective of whether AmeriPride had  
9 insurance that covered claims made by AmeriPride in this  
10 litigation, AmeriPride received monies to pay for claims  
11 against AmeriPride, and for site remediation and investigation  
12 costs related to the Site contamination. Despite not having  
13 paid them in full, AmeriPride now seeks to recover these total  
14 amounts from TEO. This fact is relevant because these monies  
15 received by AmeriPride will be a set off against the future  
16 costs AmeriPride seeks to recover. AmeriPride's Position:  
17 Disputed. AmeriPride had liability policies that do not  
18 provide coverage for claims made by AmeriPride in this  
19 litigation. AmeriPride makes a detailed argument why TEO is  
20 wrong in the disputed evidentiary issues section of its  
21 separate pretrial statement which should be incorporated by  
22 reference here, if necessary.)

23 75. Whether or not AmeriPride, since the discovery of the  
24 contamination at the site, made a claim for PCE contamination  
25 to its insurance carriers? (TEO's Position: AmeriPride  
26 received insurance monies to pay for claims brought against

1 AmeriPride, and for site remediation and investigation costs  
2 related to the Site contamination. Despite not having paid  
3 them in full, AmeriPride now seeks to recover these total  
4 amounts from TEO. The monies AmeriPride has received should  
5 act as set offs, an issue the Court's order left. This fact  
6 is relevant to AmeriPride's future costs under its section 107  
7 claim and its declaratory relied claim. AmeriPride's Position:  
8 Disputed as irrelevant and untimely. The Court entered summary  
9 adjudication on the amounts incurred to settle CERCLA Section  
10 107 claims against AmeriPride by Cal-Am Water Co. and  
11 Huhtamaki. (Dkt. 735.) In opposing AmeriPride's motion for  
12 summary judgment, in the Declaration of Emily M. Weissenberger  
13 in Support of Texas Eastern Overseas, Inc.'s Opposition to  
14 Plaintiff AmeriPride Services Inc.'s Motion for Summary  
15 Judgment (Dkt. 717), TEO provided evidence of credits required  
16 for AmeriPride's settlements with Cal-Am Water Co. and  
17 Huhtamaki. (Dkt. 715 56; Dkt. 716 42.) The  
18 AmeriPride-Chromalloy settlement was Exhibit L to Ms.  
19 Weissenberger's declaration. (Dkt. 717-12.) The  
20 AmeriPride-Petrolane settlement was Exhibit M to Ms.  
21 Weissenberger's declaration. (Dkt. 717-12.) No request for  
22 a credit for any payment by AmeriPride's insurance was made.  
23 None of the declarations filed by TEO made the claim "that, for  
24 specified reasons, it cannot present facts essential to justify  
25 its opposition" as required by Fed. R. Civ. P. 56(d). (See  
26 Dkt. 717.) A proposed finding of fact is not a discovery tool.

1 The Court issued an order to TEO denying discovery on this  
2 issue for lack of diligence in the face of the Court's  
3 Scheduling Order. (Dkt. 765.) AmeriPride makes a detailed  
4 argument why TEO is wrong in the disputed evidentiary issues  
5 section of its separate pretrial statement which should be  
6 incorporated by reference here, if necessary.)

7 76. Whether or not AmeriPride received money from its  
8 insurance carriers as a result of the claim made? (TEO's  
9 Position: AmeriPride received insurance monies to pay for  
10 claims brought against AmeriPride, and for site remediation and  
11 investigation costs related to the Site contamination. Despite  
12 not having paid them in full, AmeriPride now seeks to recover  
13 these total amounts from TEO. The monies AmeriPride has  
14 received should act as set offs, an issue the Court's order  
15 left. This fact is relevant to AmeriPride's future costs under  
16 its section 107 claim and its declaratory relied claim.  
17 AmeriPride's Position: Disputed as irrelevant and untimely.  
18 The Court entered summary adjudication on the amounts incurred  
19 to settle CERCLA Section 107 claims against AmeriPride by  
20 Cal-Am Water Co. and Huhtamaki. (Dkt. 735.) In opposing  
21 AmeriPride's motion for summary judgment, in the Declaration  
22 of Emily M. Weissenberger in Support of Texas Eastern Overseas,  
23 Inc.'s Opposition to Plaintiff AmeriprideAmeriPride Services  
24 Inc.'s Motion For Summary Judgment (Dkt. 717), TEO provided  
25 evidence of credits required for AmeriPride's settlements with  
26 Cal-Am Water Co. and Huhtamaki. (Dkt. 715 56; Dkt. 716 42.)

1 The AmeriPride-Chromalloy settlement was Exhibit L to Ms.  
2 Weissenberger's declaration. (Dkt. 717-12.) The  
3 AmeriPride-Petrolane settlement was Exhibit M to Ms.  
4 Weissenberger's declaration. (Dkt. 717-12.) No request for  
5 a credit for any payment by AmeriPride's insurance was made.  
6 None of the declarations filed by TEO made the claim "that, for  
7 specified reasons, it cannot present facts essential to justify  
8 its opposition" as required by Fed. R. Civ. P. 56(d). (See  
9 Dkt. 717.) A proposed finding of fact is not a discovery tool.  
10 The Court issued an order to TEO denying discovery on this  
11 issue for lack of diligence in the face of the Court's  
12 Scheduling Order. (Dkt. 765.) AmeriPride makes a detailed  
13 argument why TEO is wrong in the disputed evidentiary issues  
14 section of its separate pretrial statement which should be  
15 incorporated by reference here, if necessary.)

16 77. Whether or not, when the Facility was sold to  
17 AmeriPride, AmeriPride was aware there were environmental  
18 concerns related to the site? (TEO's Position: There is  
19 evidence to support this fact. AmeriPride's Position:  
20 Disputed. There is no evidence to support this alleged fact.)

21 78. Whether or not AmeriPride contributed to the soil,  
22 soil gas, and groundwater contamination at the site? (TEO's  
23 Position: This fact is not in dispute. Per the parties' July  
24 12, 2011 Stipulation, AmeriPride is prohibited from presenting  
25 any evidence which denies it contributed to the soil and  
26 groundwater contamination. AmeriPride's Position: Cumulative.



1 AmeriPride has complied fully with the terms of the stipulation  
2 in agreeing to Undisputed Fact 69.)

3 79. Whether or not the pipes removed by AmeriPride leaked  
4 PCE-contaminated wastewater into the soil and groundwater and  
5 this contamination was a cause of the contamination on the  
6 Huhtamaki property? (TEO's Position: Per the parties' July  
7 12, 2011, the fact finder is instructed to find that this fact  
8 is established. AmeriPride's Position: Cumulative.  
9 AmeriPride has complied fully with the terms of the stipulation  
10 in agreeing to Undisputed Fact 69.)

11 80. Whether or not, between 1983 and 1985, AmeriPride's  
12 employees or agents detected the odor of PCE during the  
13 excavation of the wash aisle trench? (TEO's Position: In  
14 AmeriPride's March 1, 2011 Response to TEO's Request for  
15 Admissions, AmeriPride admitted that the wash trench excavation  
16 occurred during its operation of the Facility, and admitted the  
17 following facts related to this excavation:

18 REQUEST FOR ADMISSION NO. 29:

19 Admit that YOU detected PCE odors emanating from  
20 subsurface soil surrounding the wash trench excavation referred  
21 to in Request No. 28.

22 RESPONSE TO REQUEST NO. 29:

23 Denied. AmeriPride admits that a trench at the Facility  
24 was extended after AmeriPride purchased the Facility. The odor  
25 of PCE was detected during the excavation.

26 REQUEST FOR ADMISSION NO. 30:



1 Admit that one or more of YOUR employees or agents became  
2 sick as a result of the PCE odors emanating from the wash  
3 trench excavation referred to in Request No. 28.

4 RESPONSE TO REQUEST NO. 30:

5 Denied. AmeriPride admits that a trench at the Facility  
6 was extended after AmeriPride purchased the Facility. The odor  
7 of PCE was detected during the excavation. People in the office  
8 claimed the odor was giving them a headache, so they were sent  
9 home early.

10 Subsequently, without leave of court, AmeriPride  
11 improperly filed Amended Responses denying these facts.  
12 Federal Rule of Civil Procedure Rule 36(b) requires a party to  
13 move the court for an Order allowing it to amend or withdraw  
14 its admissions. AmeriPride failed to do so, and the motion  
15 cut-off date is now passed. Accordingly, AmeriPride is  
16 precluded from introducing any and all evidence, references to  
17 evidence, testimony, or argument inconsistent with its initial  
18 admissions regarding the wash trench excavation; and court  
19 should deem the matter admitted and conclusively established.  
20 In AmeriPride's lengthy recitation of the alleged facts what  
21 is missing is an explanation as to why it admitted the fact in  
22 the first instance. All the evidence it relies upon was  
23 available to it at the time. The only thing that is different  
24 is AmeriPride's understanding of the impact of the admission.  
25 AmeriPride should not be allowed to withdraw an admission  
26 simply because it discovered its admission had significance.

1 TEO has relied on the admission and would be significantly  
2 prejudiced by AmeriPride's gamesmanship. AmeriPride's  
3 Position: Disputed. The evidence does not support this  
4 alleged fact. TEO's expert, Jim Warner, testified that this  
5 event must have taken place prior to AmeriPride's taking  
6 ownership of the Facility in 1983. (Warner Depo. at 129:7-22.)  
7 AmeriPride initially admitted this fact in its March 1, 2011  
8 initial responses to TEO's requests for admissions. This  
9 admission was based on the first deposition of Mr. Smith.  
10 However, Mr. Smith testified differently on refreshed  
11 recollection in a second deposition:

12 Q. MR. KAPLAN: Was the expansion in connection with  
13 the Community acquisition before the facility was  
14 purchased by American Linen ?

15 THE WITNESS: Yes.

16 (Robert Smith May 3, 2006 Depo. at 14:11-19.) John Dankoff  
17 testified to the same effect. (Dankoff May 3, 2006 Depo. at  
18 9:16-10:18; 34:1-14.) Mr. Smith's testimony as a whole,  
19 coupled with Mr. Dankoff's testimony, makes clear that the wash  
20 water trench expansion at the Facility that is the subject of  
21 TEO's Requests for Admissions 28-30 and 33 took place during  
22 VIS, Inc.'s ownership and operation of the Facility, not  
23 AmeriPride's. On April 22, 2011, AmeriPride amended its  
24 responses to reflect Mr. Smith's testimony at his second  
25 deposition. TEO had both depositions of Mr. Smith. In  
26 addition, AmeriPride served amended interrogatory responses

1 setting forth the facts upon which AmeriPride denied TEO's  
2 Requests for Admissions 28-30 and 33. Based on the state of  
3 the evidence and TEO's expert's own understanding of the  
4 evidence, AmeriPride requests that it be relieved from the  
5 admission pursuant to Fed. R. Civ. P. 36(b). According to Rule  
6 16(e), "Subject to Rule 16(e), the court may permit withdrawal  
7 or amendment if it would promote the presentation of the merits  
8 of the action and if the court is not persuaded that it would  
9 prejudice the requesting party in maintaining or defending the  
10 action on the merits." Fed. R. Civ. P. 36(b). The Court has  
11 not issued a final pretrial conference order, so it is not  
12 limited by Fed. R. Civ. P. 16(e). AmeriPride maintains that  
13 allowing this request would not prejudice TEO in maintaining  
14 or defending the action on the merits. AmeriPride asked TEO  
15 to agree, but TEO refused. AmeriPride's separate pretrial  
16 statement requests that the Court provide relief from the  
17 admissions based on a lack of prejudice to TEO as demonstrated,  
18 in part, by TEO's Position stated above.)

19 81. Whether or not, between 1983 and 1985, AmeriPride's  
20 employees detected the odor of PCE during the excavation of the  
21 wash aisle trench caused AmeriPride's employees or agents to  
22 get headaches and leave the Facility? (TEO's Position: In  
23 AmeriPride's March 1, 2011 Response to TEO's Request for  
24 Admissions, AmeriPride admitted that the wash trench excavation  
25 occurred during its operation of the Facility, and admitted the  
26 following facts related to this excavation:

1       REQUEST FOR ADMISSION NO. 29:

2       Admit that YOU detected PCE odors emanating from  
3 subsurface soil surrounding the wash trench excavation referred  
4 to in Request No. 28.

5       RESPONSE TO REQUEST NO. 29:

6       Denied. AmeriPride admits that a trench at the Facility  
7 was extended after AmeriPride purchased the Facility. The odor  
8 of PCE was detected during the excavation.

9       REQUEST FOR ADMISSION NO. 30:

10       Admit that one or more of YOUR employees or agents became  
11 sick as a result of the PCE odors emanating from the wash  
12 trench excavation referred to in Request No. 28.

13       RESPONSE TO REQUEST NO. 30:

14       Denied. AmeriPride admits that a trench at the Facility  
15 was extended after AmeriPride purchased the Facility. The odor  
16 of PCE was detected during the excavation. People in the office  
17 claimed the odor was giving them a headache, so they were sent  
18 home early.

19       Subsequently, without leave of court, AmeriPride  
20 improperly filed Amended Responses denying these facts.  
21 Federal Rule of Civil Procedure Rule 36(b) requires a party to  
22 move the court for an Order allowing it to amend or withdraw  
23 its admissions. AmeriPride failed to do so, and the motion  
24 cut-off date is now passed. Accordingly, AmeriPride should be  
25 precluded from introducing any and all evidence, references to  
26 evidence, testimony, or argument inconsistent with its initial

1 admissions regarding the wash trench excavation; and court  
2 should deem the matter admitted and conclusively established.  
3 In AmeriPride's lengthy recitation of the alleged facts what  
4 is missing is an explanation as to why it admitted the fact in  
5 the first instance. All the evidence it relies upon was  
6 available to it at the time. The only thing that is different  
7 is AmeriPride's understanding of the impact of the admission.  
8 AmeriPride should not be allowed to withdraw an admission  
9 simply because it discovered its admission had significance.  
10 TEO has relied on the admission and would be significantly  
11 prejudiced by AmeriPride's gamesmanship. AmeriPride's  
12 Position: The evidence does not support this alleged fact.  
13 TEO's expert, Jim Warner, testified that this event must have  
14 taken place prior to AmeriPride's taking ownership of the  
15 Facility in 1983. (Warner Depo. at 129:7-22.) AmeriPride  
16 initially admitted this fact in its March 1, 2011 initial  
17 responses to TEO's requests for admissions. This admission was  
18 based on the first deposition of Mr. Smith. However, Mr. Smith  
19 testified differently on refreshed recollection in a second  
20 deposition:

21 Q. MR. KAPLAN: Was the expansion in connection with  
22 the Community acquisition before the facility was  
23 purchased by American Linen ?

24 THE WITNESS: Yes.

25 (Robert Smith May 3, 2006 Depo. at 14:11-19.) John Dankoff  
26 testified to the same effect. (Dankoff May 3, 2006 Depo. at

1 9:16-10:18; 34:1-14.) Mr. Smith's testimony as a whole,  
2 coupled with Mr. Dankoff's testimony, makes clear that the wash  
3 water trench expansion at the Facility that is the subject of  
4 TEO's Requests for Admissions 28-30 and 33 took place during  
5 VIS, Inc.'s ownership and operation of the Facility, not  
6 AmeriPride's. On April 22, 2011, AmeriPride amended its  
7 responses to reflect Mr. Smith's testimony at his second  
8 deposition. TEO had both depositions of Mr. Smith. In  
9 addition, AmeriPride served amended interrogatory responses  
10 setting forth the facts upon which AmeriPride denied TEO's  
11 Requests for Admissions 28-30 and 33. Based on the state of  
12 the evidence and TEO's expert's own understanding of the  
13 evidence, AmeriPride requests that it be relieved from the  
14 admission pursuant to Fed. R. Civ. P. 36(b). According to Rule  
15 16(e), "Subject to Rule 16(e), the court may permit withdrawal  
16 or amendment if it would promote the presentation of the merits  
17 of the action and if the court is not persuaded that it would  
18 prejudice the requesting party in maintaining or defending the  
19 action on the merits." Fed. R. Civ. P. 36(b). The Court has  
20 not issued a final pretrial conference order, so it is not  
21 limited by Fed. R. Civ. P. 16(e). AmeriPride maintains that  
22 allowing this request would not prejudice TEO in maintaining  
23 or defending the action on the merits. AmeriPride asked TEO  
24 to agree, but TEO refused. AmeriPride's separate pretrial  
25 statement requests that the Court provide relief from the  
26 admissions based on a lack of prejudice to TEO as demonstrated,



1 in part, by TEO's Position stated above.)

2 82. Whether or not, between 1983 and 1985, AmeriPride did  
3 not report the discovery of PCE fumes at the Facility to any  
4 authorities? (TEO's Position: Per the court's summary  
5 adjudication order, it is undisputed that when the trench was  
6 expanded, the PCE fumes that were discovered were not reported  
7 to any authorities. Instead, the only action that was taken  
8 was to replace concrete over the soil and contain the fumes.  
9 (Dkt. 735, p. 16). Further, the evidence establishes  
10 AmeriPride did not report PCE contamination to the regulatory  
11 authorities until 1997. AmeriPride's Position: Disputed. The  
12 evidence does not support this alleged fact.)

13 83. Whether or not, between 1983 and 1985, the only  
14 action AmeriPride took to contain the fumes was to replace the  
15 concrete over the soil? (TEO's Position: Per the court's  
16 summary adjudication order, it is undisputed that when the  
17 trench was expanded, the PCE fumes discovered were not reported  
18 to any authorities. Instead, the only action that was taken  
19 was to replace concrete over the soil and contain the fumes.  
20 (Dkt. 735, p. 16). AmeriPride's Position: Disputed. The  
21 evidence does not support this alleged fact.)

22 84. Whether or not AmeriPride discharged wastewater into  
23 the soil during its ownership and operation of the Facility?  
24 (TEO's Position: Per the parties' July 12, 2011 Stipulation,  
25 this fact is not in dispute. AmeriPride's Position:  
26 Cumulative. AmeriPride has complied fully with the terms of

1 the stipulation in agreeing to Undisputed Fact 69.)

2 85. Whether or not during AmeriPride's ownership and  
3 operation, in 1983 or 1984, a pipe connecting the washing  
4 machines to a sewer or sump pump and/or tank broke at the  
5 Facility? (TEO's Position: Ray De Los Santos testified in his  
6 deposition that this pipe broke and was leaking. AmeriPride's  
7 Position: Disputed. The evidence does not support this  
8 alleged fact. Mr. Delosantos testified to much less certainty  
9 that is implied by the alleged fact:

10 Q. The ten inch pipe - how long before you left them?

11 A. Six months. Something like that. Something like that.  
12 I'm not too sure. I know it was broke, you know, but I didn't  
13 keep track of that. I didn't order it to get fixed, so I  
14 couldn't tell you.

15 (Delossantos Depo. 50:3-8, emphasis added.)

16 86. Whether or not the sump at the site leaked? (TEO's  
17 Position: There is only one sump at the Site. The testimony  
18 of Anne Farr supports this fact. Further, the parties have  
19 previously agreed that the wastewater sump overflowed "a  
20 couple" of times. (Dkt. 735 p. 19). AmeriPride's Position:  
21 Disputed. Vague. Assuming this draft fact refers to the sump  
22 outside the facility that handles waste water at the Facility,  
23 this draft fact is the subject of disputed expert testimony.  
24 An over flow, as claimed in TEO's Position is quite different  
25 from a leak.)

26 87. Whether or not the pipes, sump, and wastewater

1 systems at the site leaked PCE and other chemicals? (TEO's  
2 Position: In addition to the parties' July 12, 2011  
3 Stipulation establishing that the removed pipes leaked PCE  
4 contaminated wastewater, the evidence establishes the sump and  
5 other pipes at the site leaked. Jim Warner and Anne Gates  
6 testified that, as supported by several studies, wastewater  
7 systems generally leak. Warner also testified the most likely  
8 source of contaminants other than PCE breakdown products would  
9 be leaking wastewater. AmeriPride's Position: Cumulative.  
10 AmeriPride has complied fully with the terms of the stipulation  
11 by agreeing to Undisputed Fact 69.)

12 88. Whether or not AmeriPride received laundry that was  
13 contaminated with PCE? TEO's Position: The parties agreed to  
14 this fact, it is not in dispute. (Dkt. 735 p. 20). It is  
15 undisputed that PCE has been detected in AmeriPride's  
16 wastewater. Other chemicals have also been detected in the  
17 wastewater. The wastewater systems and pipes leaked during  
18 AmeriPride's ownership and operation of the Facility. It is  
19 undisputed AmeriPride leaked PCE-contaminated wastewater into  
20 the soil. (AmeriPride's Position: This fact is duplicative of  
21 Undisputed Fact 73 which states: "AmeriPride and VIS, Inc.  
22 received and processed laundry from customers that from time  
23 to time was contaminated with PCE and other chemicals that are  
24 not listed as chemicals of concern in any of the Cleanup and  
25 Abatement Orders listed in Undisputed Fact 83.")

26 89. Whether or not AmeriPride's operations at the Site

1 added PCE and other contaminants into the environment? (TEO's  
2 Position: It is undisputed that dissolved PCE has been  
3 detected in AmeriPride's wastewater and that shop towels that  
4 AmeriPride laundered contained PCE. Other chemicals have also  
5 been detected in the wastewater. The wastewater systems and  
6 pipes leaked during AmeriPride's ownership and operation of the  
7 Facility. It is undisputed AmeriPride leaked PCE-contaminated  
8 wastewater into the soil. Further, the evidence does not  
9 substantiate that there was no use of products containing VOCs  
10 during AmeriPride's ownership and operation of the Facility.  
11 AmeriPride's Position: This alleged fact is duplicative of  
12 Undisputed Fact 37, 68 and 72. Undisputed Fact 37 states: "In  
13 addition to PCE and its breakdown products and other chemicals  
14 that are not listed as chemicals of concern in any of the  
15 Cleanup and Abatement Orders listed in Undisputed Fact 83 have  
16 been detected in samples from Gore Sorbers, soil vapor, soil  
17 or groundwater collected at the Site." Undisputed Fact 69  
18 states: "During AmeriPride's ownership and operation of the  
19 Facility, pipes removed by AmeriPride leaked PCE-contaminated  
20 wastewater into the soil and groundwater and this contamination  
21 was a cause of the contamination on the Huhtamaki property."  
22 Undisputed Fact 77 states: "During the course of the  
23 investigation, AmeriPride discovered that in addition to PCE  
24 in the soil beneath the buildings at the Facility, PCE, PCE  
25 breakdown products and other chemicals that are not listed as  
26 chemicals of concern in any of the Cleanup and Abatement Orders

1 listed in Undisputed Fact 83 were present in the groundwater  
2 beneath the Facility.")

3 90. Whether or not the wastewater discharged by  
4 AmeriPride, regardless of whether it contained PCE, mobilized  
5 the PCE already in the soil, driving it deeper into the soil,  
6 causing it to reach the groundwater, and aggravating the  
7 contamination problem at the Site? (TEO's Position: The type  
8 and amount of PCE spilled by VIS, Inc. moved through the soil  
9 slowly absent a driving force. Wastewater is a driving force  
10 that could have mobilized the PCE in the soil and caused it to  
11 travel deeper into the soil and to reach the groundwater.  
12 AmeriPride's Position: Disputed. This is the subject of an  
13 expert dispute. Any type of water, including rain water or  
14 wastewater, can be a driving force that can cause the type of  
15 residual DNAPL PCE caused by VIS, Inc.'s DNAPL PCE releases to  
16 migrate to groundwater.)

17 91. Whether or not AmeriPride's failure to report the PCE  
18 contamination it discovered during the wash aisle trench  
19 excavation and extension increased the size and cost of  
20 remediation needed at the Site? (TEO's Position: AmeriPride's  
21 failure to report allowed the plume to spread, thereby  
22 increasing the contamination. AmeriPride's Position: Disputed  
23 and assumes other facts. This is the subject of an expert  
24 dispute.)

25 92. Whether or not AmeriPride's costs, including its  
26 section 113(f) costs have been offset by other sources? (TEO's



1 Position: AmeriPride offset its cost of purchasing water from  
2 the city by \$28,632 through its practice of re-using treated  
3 water. AmeriPride has failed to reduce this saved amount from  
4 its total cost calculations. A portion of the section 113(f)  
5 costs claimed by AmeriPride must be off set by the settlements  
6 it entered with Petrolane and Chromalloy. AmeriPride's  
7 Position: Disputed as a result of the use of the vague terms  
8 "AmeriPride's costs, including its section 113(f) costs" and  
9 "other sources" in the proposed fact. Pursuant to the Summary  
10 Adjudication Order, TEO is entitled to a credit against its  
11 response costs claim under CERCLA Section 107 for OU2 water  
12 reuse of \$28,632 (Dkt. 735 at 46; Dkt. 707-1 at 61). Pursuant  
13 to the Summary Adjudication Order, TEO is entitled to a credit  
14 for payments made to settle the CERCLA Section 107 claims of  
15 Petrolane and Chromally totaling \$3,250,000 (Dkt. 735 at 46;  
16 Dkt. 707-10).)

17 93. Whether or not the Huhtamaki settlement impacts  
18 AmeriPride's recovery? (TEO's Position: The Court's July 2,  
19 2007 order approving the settlements between Chromalloy and  
20 AmeriPride, AmeriPride and Petrolane and AmeriPride and  
21 Huhtamaki adopted Section 6 of the Uniform Comparative Fault  
22 Act ("UCFA") as the federal common law in this case for the  
23 purpose of determining the legal effect of the settlement  
24 agreements. Accordingly, TEO's liability, as the non-settling  
25 defendant, must be reduced by the equitable share of the  
26 settling party's obligation, regardless of the actual



1 settlement amount. As the owner of property, Huhtamki was  
2 responsible for the contamination on their property and must  
3 share some responsibility for the contamination. Since  
4 AmeriPride settled with the party, AmeriPride must bear that  
5 party's share. AmeriPride's Position: As phrased, this is not  
6 really a fact issue. Nevertheless, there is no evidence  
7 Huhtamaki caused any of the PCE contamination that resulted  
8 from the Facility. Accordingly, Huhtamaki could have a share  
9 of no more than zero percent.)

10 94. Whether or not the Cal-Am settlement impacts  
11 AmeriPride's recovery? (TEO's Position: The Court's July 2,  
12 2007 order approving the settlements between Chromalloy and  
13 AmeriPride, AmeriPride and Petrolane and AmeriPride and  
14 Huhtamaki adopted Section 6 of the Uniform Comparative Fault  
15 Act ("UCFA") as the federal common law in this case for the  
16 purpose of determining the legal effect of the settlement  
17 agreements. Accordingly, TEO's liability, as the non-settling  
18 defendant, must be reduced by the equitable share of the  
19 settling party's obligation, regardless of the actual  
20 settlement amount. As the owner of property Cal-Am was  
21 responsible for the contamination on their property and must  
22 share some responsibility for the contamination. Since  
23 AmeriPride settled with the party, AmeriPride must bear that  
24 party's share. AmeriPride's Position: As phrased, this is not  
25 really a fact issue. Nevertheless, there is no evidence Cal-Am  
26 Water Co. caused any of the PCE contamination that resulted

1 from the Facility. Accordingly, Cal-Am Water Co. cannot have  
2 a share of more than zero percent.)

3 95. Whether or not the Petrolane settlement impacts  
4 AmeriPride's recovery? (TEO's Position: The Court's July 2,  
5 2007 order approving the settlements between Chromalloy and  
6 AmeriPride, AmeriPride and Petrolane and AmeriPride and  
7 Huhtamaki adopted Section 6 of the Uniform Comparative Fault  
8 Act ("UCFA") as the federal common law in this case for the  
9 purpose of determining the legal effect of the settlement  
10 agreements. Accordingly, TEO's liability, as the non-settling  
11 defendant, must be reduced by the equitable share of the  
12 settling party's obligation, regardless of the actual  
13 settlement amount. Petrolane, and its related companies, are  
14 allegedly the alter ego of VIS, Inc. and are responsible for  
15 the majority of the blame for the releases. AmeriPride's  
16 Position: As phrased, this is not really a fact issue.  
17 Nevertheless, there is no evidence Petrolane itself caused any  
18 of the PCE contamination that resulted from VIS, Inc. DNAPL PCE  
19 releases. Furthermore, AmeriPride does not presently claim  
20 that Petrolane was the alter ego of VIS, Inc. Nevertheless,  
21 AmeriPride has agreed that Petrolane's settlement payment  
22 should be a credit against AmeriPride's claim against TEO under  
23 Section 113(f) of CERCLA.)

24 96. Whether or not the Chromalloy settlement impacts  
25 AmeriPride's recovery? (TEO's Position: The Court's July 2,  
26 2007 order approving the settlements between Chromalloy and

1 AmeriPride, AmeriPride and Petrolane and AmeriPride and  
2 Huhtamaki adopted Section 6 of the Uniform Comparative Fault  
3 Act ("UCFA") as the federal common law in this case for the  
4 purpose of determining the legal effect of the settlement  
5 agreements. Accordingly, TEO's liability, as the non-settling  
6 defendant, must be reduced by the equitable share of the  
7 settling party's obligation, regardless of the actual  
8 settlement amount. According to AmeriPride, Chromalloy  
9 contributed to the contamination at their property and should  
10 be partially responsible for the response costs. AmeriPride's  
11 Position: As phrased, this is not really a fact issue.  
12 Nevertheless, there is no evidence Chromalloy itself caused any  
13 of the PCE contamination that resulted from the Facility.  
14 Nevertheless, AmeriPride has agreed that Chromalloy's  
15 settlement payment should be a credit against AmeriPride's  
16 claim against TEO under Section 113(f) of CERCLA.)

17 97. Whether or not the costs under §107 can be  
18 apportioned? TEO's Position: The contamination allegedly  
19 caused by VIS, Inc. would have only effected the top thirteen  
20 feet of the subsurface but for the conduct of AmeriPride.  
21 AmeriPride should be responsible for all contamination below  
22 thirteen feet. AmeriPride's Position: "Apportionment" is not  
23 the same thing as allocation under CERCLA. "[A]pportionment  
24 ... looks to whether defendants may avoid joint and several  
25 liability by establishing a fixed amount of damage for which  
26 they are liable," while contribution actions allow jointly and

1 severally liable PRPs to recover from each other on the basis  
2 of equitable considerations." Burlington Northern and Santa  
3 Fe. Ry. Co. v. United States, 129 S.Ct. 1870, 1883 (2009).  
4 Whether harm can be apportioned under CERCLA Section 107 is a  
5 legal issue in the first instance. U.S. v. Hercules, Inc., 247  
6 F. 3d 706, 178 (8th Cir. 2001) ("The preliminary issue of  
7 whether the harm to the environment is capable of apportionment  
8 among two or more causes is a question of law.").  
9 Apportionment is an affirmative defense to a CERCLA Section 107  
10 claim, so the burden of proof is on TEO. Id. at 1881. ("Not  
11 all harms are capable of apportionment, however, and CERCLA  
12 defendants seeking to avoid joint and several liability bear  
13 the burden of proving that a reasonable basis for apportionment  
14 exists."). If TEO wanted to assert an apportionment defense  
15 to AmeriPride's CERCLA Section 107 claim, the time to have done  
16 that was before the law and motion cut-off date in the Court's  
17 Scheduling Order. This TEO failed to do. According to the  
18 Court's Scheduling Order:

19 The parties should keep in mind that the purpose of law  
20 and motion is to narrow and refine the legal issues  
21 raised by the case, and to dispose of by pretrial motion  
22 those issues that are susceptible to resolution without  
23 trial. To accomplish that purpose, the parties need to  
24 identify and fully research the issues presented by the  
25 case, and then examine those issues in light of the  
26 evidence gleaned through discovery. If it appears to  
counsel after examining the legal issues and facts that  
an issue can be resolved by pretrial motion, counsel are  
to file the appropriate motion by the law and motion  
cutoff set forth supra.

(Dkt. 695 at 3-4.) The law and motion cut off was February 2,



1 2011. (Dkt. 695 at 2.) TEO did not file a summary judgment  
2 motion on apportionment. Moreover, it failed to raise  
3 apportionment as a defense to AmeriPride's summary judgment  
4 motion as to CERCLA Section 107. As the Court stated, TEO  
5 raised three arguments:

6 TEO raised three arguments in response to AmeriPride's  
7 section 107 claim. First, TEO argued that the claim was  
8 barred by AmeriPride's failure to report PCE  
9 contamination in 1983. Assuming that AmeriPride was  
10 aware of the contamination at that time, any failure to  
11 report does not demonstrate that AmeriPride was not in  
12 substantial compliance with the national contingency  
13 plan, as explained by the Ninth Circuit in *NL Industries*,  
14 792 F.2d 896. Second, TEO argues that AmeriPride's  
15 response costs were not costeffective. TEO has failed  
16 to raise a triable question regarding cost-effectiveness.  
17 Finally, TEO challenges AmeriPride's accounting for  
18 costs. Triable questions exist as to whether AmeriPride's  
19 recovery must be offset by the value of the treated water  
20 and by amounts AmeriPride received in settlement from  
21 third parties. The court further agrees that funds  
22 AmeriPride paid to Huhtamaki and Cal-Am were not  
23 "response costs" recoverable under CERCLA section 107,  
24 but AmeriPride may seek to recover these funds under  
25 section 113(f).

26 Thus, AmeriPride is entitled to summary judgment  
regarding the threshold question of TEO's liability under  
section 107.

(Dkt. 735 at 42-43.) Apportionment of harm was not one of the  
three arguments. In the Summary Adjudication Order, the Court  
held that AmeriPride had established all the elements of its  
CERCLA Section 107 claim. (Dkt. 735 at 42-43.)

TEO cannot prove that a reasonable basis for apportionment  
exists. "Apportionment is proper only when the evidence  
supports the divisibility of the damages jointly caused by the  
PRPs." *Burlington Northern and Santa Fe Ry. Co.*, 129 S. Ct.

1 at 1882, n. 9. Even if TEO had not failed to raise an  
2 apportionment defense prior to the law and motion cut-off and  
3 in defense of AmeriPride's summary judgment motion, none of  
4 TEO's experts opined that DNAPL PCE is not present more than  
5 thirteen feet below ground surface. Additionally, testimony  
6 from TEO's own expert proves that "apportionment" of harm is  
7 not possible in this case because residual DNAPL PCE caused  
8 groundwater contamination via leaching and vapor transport:

9 Q. Okay. If the - if the DNAPL didn't make its way all  
10 the way to groundwater, why is there a groundwater  
11 contamination?

12 A. Well, vapors can be transported to the water table and  
13 can contaminate groundwater. That's pretty well  
14 established. And water that infiltrates through spill  
15 zones can carry chemicals down to the water table.

16 Q. Do you think that process is happening at the - at our  
17 site?

18 A. Yes.

19 (Warner Depo. 135:15-24, emphasis added.) TEO admitted in its  
20 Third-Party Complaint that the PCE from the tank overfill was  
21 released to the soil and into the groundwater at the Site.

22 (Dkt. 697 24.) Thus, even if TEO's claim that the DNAPL PCE  
23 released by it did not itself reach groundwater, the residual  
24 DNAPL PCE caused groundwater contamination, so the Site is not  
25 divisible - capable of apportionment on the basis TEO claims.

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1       **V. NON-DISCOVERY MOTIONS TO THE COURT AND RESOLUTION**

2       a. 4/5/2000--Defendant Texas Eastern Corp. filed a motion  
3 to dismiss plaintiff's entire complaint for lack of personal  
4 jurisdiction (denied). In the alternative, defendants moved  
5 to dismiss AmeriPride's first claim for failure to state a  
6 claim under CERCLA (denied).

7       b. 9/25/2000--Plaintiff filed a motion to amend their  
8 second amended complaint (granted).

9       c. 2/3/2003--Defendant Mission Linen Supply filed a motion  
10 for partial summary judgment on the issue of ownership  
11 (stipulated that Mission would remain a party to the action and  
12 Mission would be dismissed in two related cases; AmeriPride  
13 could later amend complaint to include allegations concerning  
14 damages incurred in other two cases for which Mission could be  
15 held liable).

16       d. 8/26/2005--Plaintiff filed a motion to consolidate  
17 cases (consolidated for discovery purposes only); (decision  
18 deferred pending state court hearing regarding CA Regional  
19 Water Quality Control Board's Clean-up and Abatement Order);  
20 (motion granted, subject to reconsideration).

21       e. 4/17/2006--Plaintiff AmeriPride and Defendant Chromally  
22 American Corp. filed an ex parte motion for extension for  
23 filing of their motion for approval of settlement (granted).

24       f. 4/27/2006--Plaintiff Huhtamaki Foodservice, Inc. filed  
25 a motion to shorten time for the motion for protective order  
26 by Huhtamaki Foodservice, Inc. (denied w/o prejudice).

1 g. 4/27/2006-Plaintiff Huhtamaki Foodservice, Inc. filed  
2 a motion for protective order (denied).

3 h. 5/15/2006--Parties Texas Eastern Corp., Petrolane,  
4 Inc., AmeriPride Services, Inc., Amerigas Propane, Inc., UGI  
5 Corporation, Amerigas Partners filed a joint motion for  
6 approval of settlement and contribution bar (termed, to be  
7 renoticed).

8 i. 5/22/2006-Chromally American Corp. filed an ex parte  
9 motion to shorten time for notice of motion for approval of  
10 settlement and entry of contribution bar order (granted) or,  
11 alternatively, allowing motion to be set for hearing (granted).

12 j. 5/22/2006--Defendant Chromally American Corp. filed a  
13 joint motion for approval of settlement and entry of  
14 contribution bar order (termed, to be renoticed).

15 k. 5/23/2006--Defendant Chromally American Corp. filed an  
16 ex parte motion for an order allowing service of motion for  
17 approval of settlement and entry of contribution bar order, on  
18 non-parties (granted).

19 l. 7/6-7/2006--Plaintiff Huhtamaki Foodservice, Inc. filed  
20 Daubert motions to preclude the admission of the opinion  
21 testimony of: Mr. John Minney; Mark A. Bryant; Dr. Jessica R.  
22 Greene; Peter Mesard (terminated).

23 m. 7/7/2006--Plaintiff Huhtamaki Foodservice, Inc. filed  
24 a motion for sanctions against AmeriPride (granted).

25 n. 7/7/2006--Plaintiff Huhtamaki Foodservice, Inc. filed  
26

1 two motions for summary judgment against AmeriPride: one on  
2 tort causes of action, and one on cost recovery under federal  
3 and state law (terminated).

4 o. 7/7/2006--Plaintiff/Defendant AmeriPride Services, Inc.  
5 filed a motion for partial summary judgment against Huhtamaki  
6 (terminated).

7 p. 7/7/2006--Plaintiff/Defendant AmeriPride Services, Inc.  
8 filed a motion for judgment on the pleadings or for partial  
9 summary judgment re: Huhtamaki's punitive damage claims  
10 (terminated).

11 q. 7/7/2006--Plaintiff/Defendant AmeriPride Services, Inc.  
12 filed a motion for summary judgment re: Mission Linen Supply's  
13 contractual liability (denied).

14 r. 7/20/2006--Plaintiff/Defendant AmeriPride Services,  
15 Inc. filed a motion to strike motion Huhtamaki Foodservice,  
16 Inc.'s facts or, in the alternative, for a continuance of the  
17 hearing date and time to respond, and motion to shorten time  
18 for hearing re: motion to strike (denied).

19 s. 7/26/2006--Defendant Mission Linen Supply filed a  
20 motion for summary judgment re: "owner/control" issue  
21 (granted); and filed a motion for summary judgment for  
22 contractual indemnification (granted).

23 t. 8/2/2006--Plaintiff Huhtamaki Foodservice, Inc.

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1 filed motions to strike declarations of Jeffrey Hicks and Jeff  
2 Thuma, and motions to shorten time for their motions to strike  
3 (granted).

4 u. 8/17/2006---Plaintiff/Defendant AmeriPride Services,  
5 Inc. filed a motion for reconsideration (denied), and a motion  
6 for a certificate of appealability (granted).

7 v. 12/8/2006--Plaintiff/Defendant AmeriPride Services,  
8 Inc. filed a motion for leave to supplement the record  
9 (denied).

10 w. 12/11/2006--Plaintiff Huhtamaki Foodservice, Inc. filed  
11 a motion to strike documents and preclude expert testimony of  
12 Delta Environmental Consultants, Inc. and/or Jeffrey Thuma  
13 (granted).

14 x. 4/27/2006--Plaintiff Huhtamaki Foodservice, Inc. filed  
15 a joint motion for entry of judgment, approval of settlement,  
16 and entry of contribution bar (granted); and a joint motion for  
17 order allowing service of such motion on non-parties (granted).

18 y. 6/1/2007--Non-party California-American Water Company  
19 filed a motion to request to consideration of late-filed  
20 motion.

21 z. 6/19/2008--Plaintiff/Defendant AmeriPride filed a  
22 motion to set the pretrial conference and trial date.

23 aa. 9/26/2008--Defendant Texas Eastern Overseas, Inc.  
24 filed a motion for summary judgment for lack of capacity to be  
25 sued (granted).

26 bb. 1/7/2011--Plaintiff/Defendant AmeriPride filed a

1 motion for summary judgment (granted in part, denied in part).

2 cc. 5/23/2011--Defendant Texas Eastern Overseas, Inc.  
3 filed a motion to exclude opinion testimony of plaintiff's  
4 expert. dd.

5 dd. 5/23/2011--Defendant Texas Eastern Overseas, Inc.  
6 filed a motion for sanctions against AmeriPride (resolved).

7 **VI. DISPUTED EVIDENTIARY ISSUES**

8 a. Plain, concise summary of any reasonably anticipated  
9 disputes concerning admissibility of live and deposition  
10 testimony and a statement whether each such dispute should be  
11 resolved by motion in limine, briefed in the trial brief, or  
12 addressed in some other manner.

13 i. Anticipated Dispute about whether TEO cannot  
14 prove AmeriPride's share as required by CERCLA Section 113(f).

15 AmeriPride asserts that TEO cannot prove AmeriPride's  
16 share because TEO's experts gave no opinion or deposition  
17 testimony on the percentage amount of AmeriPride's share:

18 TEO's expert, Jim Warner, claims that PCE from  
19 AmeriPride's wastewater system had a "material contribution"  
20 to the PCE contamination at the Site, but Mr. Warner does not  
21 have an opinion on a percentage. (Warner Depo. at  
22 193:6-194:2.) Despite clear testimony, TEO disputes this.  
23 (Dkt. 756 33 at 5.) In his deposition, TEO's expert, Jim  
24 Warner, testified that he could not assign mass to each of the  
25 parties because it was a "combined contribution."  
26 Specifically, Jim Warner testified:

1 Q. What part should be assigned to AmeriPride?

2 A. What do you mean?

3 Q. Well, you say in part it should be assigned to  
4 AmeriPride. What part? How much?

5 A. How much?

6 Q. Yeah.

7 A. I - I don't think we have the data to assign the mass  
8 to each of the parties. It's been a combined  
9 contribution."

10 (Warner Depo. at 194:12-20, emphasis added.);

11 According to Jim Warner, TEO's expert, he does not have  
12 the data to assign accurate mass to wastewater releases versus  
13 PCE releases. Specifically, Jim Warner testified:

14 Q. I get the what, which is what you're describing now,  
15 what happened and what releases there were, blah, blah,  
16 and all that stuff. That's the what to me. What I'm  
17 asking is the how much question. How much? When you say  
18 significant, I want to know how much.

19 A. I don't think - we don't have the data to assign  
20 accurate mass to wastewater releases versus PCE releases.  
21 The other part of this is the PCE releases that are  
22 related to dry cleaning as a transport mechanism of  
23 wastewater are moving through and leaching the PCE and  
24 carrying it down to the water table. So even for PCE that  
25 was related to dry cleaning, the wastewater has acted as  
26 an agent for moving the PCE down to the water table.



1 Q. Well, let's say you didn't have any DNAPL PCE in the  
2 - in the subsurface at the site. Okay? And you only had  
3 the wastewater. What kind of a cleanup would we be  
4 looking at here?

5 A. I can't answer that question because the PCE is there.  
6 And the PCE is from a combination of sources. Can't subtract  
7 those two out."

8 (Warner Depo. at 196:20-197:16, emphasis added.).

9 According to TEO's expert, Jim Warner, the amount of  
10 wastewater that got out during either VIS, Inc.'s or  
11 AmeriPride's operations is uncertain. "We don't have data to  
12 quantify that other than to say that it's significant based on  
13 the limited data we have from soil for non-dry-cleaning-related  
14 chemicals and the soil vapor data and the groundwater data."

15 (Warner Depo. at 93:18-94:1.);

16 TEO's expert, Jim Warner, does not know the amount of  
17 exfiltration from the wastewater system. (Id. at 94:10-95:1.);

18 TEO's expert, Jim Warner, did not perform a calculation  
19 of the total amount of PCE actually released from the  
20 wastewater system at the facility. (Id. at 100:17-21.);

21 TEO's expert, Jim Warner, did not perform a calculation  
22 of the exfiltration from any sump at the facility. (Id. at  
23 100:22-24.);

24 TEO's expert, Jim Warner, does not have a number for the  
25 total amount of PCE that would have been released in the

26 ////

1 wastewater itself through exfiltration. (Id. at  
2 100:25-101:3.);

3 Assuming the calculations by TEO's expert, Anne Gates, are  
4 correct (and they are not), even the maximum amount she  
5 calculates for PCEs released from the wastewater system during  
6 AmeriPride's period of ownership is approximately 10 percent  
7 of the total pounds of PCE pulled out of just a part of the  
8 site with the soil vapor extraction system in Operable Unit 1.  
9 (Gates Depo. at 173:22-174:4.) Anne Gates admits that her  
10 "estimate does not account for the amount of PCE released  
11 during spills from the wastewater system, nor does it account  
12 for other spills of PCE from non-wastewater operations" which  
13 include releases listed in Table 8 from Warner's report [Dkt.  
14 707-10 at 16]. (Gates Depo. at 174:9-24.) Accordingly, PCE  
15 released in wastewater does not explain the PCE contamination  
16 at the Site.

17 As of the end of December 2010, 4,074 pounds (or  
18 approximately 1,852 kilograms) of PCE had been removed from the  
19 subsurface at the Site. (Farr Expert Rebuttal Report at 15,  
20 Dkt. 729-2 at 21, as corrected in Dr. Farr's April 29, 2011  
21 deposition ("Farr Depo.") at 66:14-68:13.) According to Dr.  
22 Farr, the reasonable maximum and worst case estimates of total  
23 mass of PCE that may have been released to the subsurface from  
24 VIS, Inc.'s industrial laundry operations and AmeriPride's  
25 industrial laundry operations can be compared to the total mass  
26 of PCE removed from the Site to date because:

1           (a) The estimated mass of PCE which was discharged in the  
2 wastewater was calculated using three different assumptions  
3 regarding the average PCE concentrations prior to November  
4 1990, as follows:

5               (1) assuming a time-weighted average concentration  
6 of 283 parts per billion measured for the period from November  
7 1990 through April 2010;

8               (2) assuming a time-weighted average PCE  
9 concentration of 406 parts per billion measured for the period  
10 from November 1990 through January 1998; and,

11              (3) assuming a conservatively high concentration of  
12 6,000 parts per billion, consistent with the maximum  
13 concentration of PCE ever detected in wastewater at the  
14 Facility during Plaintiff's ownership. (Id. at 12, Dkt. 729-2  
15 at 18.);

16           (b) Even if one were to assume a reasonable maximum  
17 leakage rate for the wastewater conveyance system of 1 % of the  
18 total flow volume, consistent with systems with known sewer  
19 defects, then the resulting reasonable maximum total mass of  
20 dissolved PCE that could have been released to the subsurface  
21 due to wastewater releases during the period from mid June 1983  
22 through April 2010 is approximately 5.1 to 5.7 kilograms  
23 (consistent with average concentrations of PCE detected in  
24 wastewater), with a worst case estimate of 34 kilograms  
25 (consistent with assuming a concentration of 6,000 µg/l of PCE

26 ////

1 in wastewater prior to November 1990. Id. at 14, Dkt. 729-2  
2 at 20.);

3 (c) Similarly, for operations of the industrial  
4 laundering prior to June 1983, a reasonable maximum total mass  
5 of PCE that could have been released to the subsurface is  
6 approximately 3.6 to 5.2 kilograms (consistent with average  
7 concentrations of PCE detected in wastewater), with a worst  
8 case estimate of 77 kilograms (consistent with assuming a  
9 concentration of 6,000 parts per billion of PCE in wastewater  
10 prior to November 1990). (Id.);

11 (d) The reasonable maximum contribution of PCE from  
12 AmeriPride's wastewater operations to the Site contamination  
13 is less than 0.3% (5.7 kilograms/1,852 kilograms) of the total  
14 PCE released at the Site. (Id. at 15, Dkt. 729-2 at 21, as  
15 corrected in Farr Depo. at 66:14-68:13.);

16 (e) Similarly, VIS, Inc.'s reasonable maximum  
17 contribution of PCE from wastewater operations to the Site  
18 contamination is less than 0.3% (5.2 kilograms/1,852 kilograms)  
19 of the total PCE released at the Site. (Id.); and,

20 (f) Alternatively, the worst case contribution of PCE  
21 from AmeriPride's industrial laundering operation is less than  
22 1.8% (33.9 kilograms/1,852 kilograms) of the total PCE released  
23 at the Site and VIS, Inc.'s worst case contribution of PCE from  
24 wastewater releases is less than 4.1% (76.7 kilograms/1,852  
25 kilograms) of the total PCE at the Site. (Id.)

26 ////

1 AmeriPride thinks this disputed evidentiary issue probably  
2 is best handled through a motion in limine.

3 ii. Anticipated dispute as to whether or not TEO can  
4 claim a credit for additional amounts not previously raised in  
5 opposition to AmeriPride's motion for summary judgment.

6 AmeriPride anticipates that there will be a dispute as to  
7 whether or not TEO can claim a credit for amounts TEO failed  
8 to raise in opposition to AmeriPride's motion for summary  
9 judgment. As discussed more fully below, the Court has already  
10 ruled on what credits will be applied. A credit for insurance  
11 payments is not a credit mentioned in the Summary Adjudication  
12 Order because TEO did not raise it in response to AmeriPride's  
13 summary judgment motion. However, TEO now claims insurance  
14 payments were made to AmeriPride for which it deserves a credit  
15 against AmeriPride's CERCLA Section 113(f) claims for payment  
16 of the Cal-Am Water Co. and Huhtamaki settlements totaling  
17 \$10.25 million. (See Disputed Facts 18 and 19.) The Summary  
18 Adjudication Order decided TEO was entitled to credits for  
19 payments made by AmeriPride to settle CERCLA Section 107 claims  
20 against AmeriPride by Cal-Am Water Co. and Huhtamaki. (Dkt.  
21 735.) In opposing AmeriPride's motion for summary judgment,  
22 TEO only sought three credits. First, TEO sought through the  
23 declaration of its expert, Jim Warner, a credit for "reused  
24 treated groundwater from the OU2 treatment system in laundry  
25 operations." (Dkt. 718 49.) This credit is specifically  
26 addressed in the Summary Adjudication Order. (Dkt. 735 at 39.)

1 Next, in the Declaration of Emily M. Weissenberger in Support  
2 of Texas Eastern Overseas, Inc.'s Opposition to Plaintiff  
3 AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt.  
4 717), TEO provided evidence of two other credits, namely: (1)  
5 A payment to AmeriPride as a result of a settlement between  
6 AmeriPride and Chromalloy; and, (2) A payment made to  
7 AmeriPride as a result of a settlement between AmeriPride and  
8 Petrolane. (Dkt. 715 56. ) The AmeriPride-Chromalloy  
9 settlement was Exhibit L to Ms. Weissenberger's declaration.  
10 (Dkt. 717-12.) The AmeriPride-Petrolane settlement was Exhibit  
11 M to Ms. Weissenberger's declaration. (Dkt. 717-12.) The  
12 Court discusses these next two credits in the Summary  
13 Adjudication Order:

14 As to funds received in settlement, under CERCLA, a  
15 settlement by one defendant "reduces the potential  
16 liability of the others by the amount of the settlement."  
17 42 U.S.C. § 9613(f)(2). TEO asserts that AmeriPride has  
18 received funds in settlements with Chromalloy and  
19 Petrolane, although TEO does not quantify these funds.  
TEO's response to SUF 56. AmeriPride agrees that it has  
received these funds and that its claim must be reduced  
by this amount. Because the parties' briefing does not  
quantify these funds, the court does not further address  
this issue now.

20 (Dkt. 735 at 39.)

21 No request for a credit for any payment by AmeriPride's  
22 insurance was made by TEO. TEO did not oppose AmeriPride's  
23 motion for summary judgment on the basis of any proof of  
24 insurance payments consistent with the requirements of Fed. R.  
25 Civ. P. 56, L.R. 260 and the Court's Scheduling Order (Dkt.  
26 695).



1 Neither did TEO oppose the motion for summary judgment on the  
2 basis of a need for discovery on insurance payments as required  
3 by Fed. R. Civ. P. 56(d) and L.R. 260(b). None of the  
4 declarations filed by TEO in opposition to AmeriPride's motion  
5 for summary judgment made the claim "that, for specified  
6 reasons, it cannot present facts essential to justify its  
7 opposition" as required by Fed. R. Civ. P. 56(d). (See Dkt.  
8 717.) L.R. 260(b) requires that: "If a need for discovery is  
9 asserted as a basis for denial of the motion, the party  
10 opposing the motion shall provide a specification of the  
11 particular facts on which discovery is to be had or the issues  
12 on which discovery is necessary." L.R. 260(b) (emphasis  
13 added). TEO did not specify insurance payments as a fact on  
14 which discovery was to be had or was necessary.

15 The Court's Scheduling Order states: "Where the parties  
16 bring motions for summary judgment, the court will deem facts  
17 which are apparently undisputed as undisputed under Fed. R.  
18 Civ. P. 56(d), unless specifically reserved and that party  
19 tenders evidence to support the reservation." (Dkt. 695 at 4,  
20 emphasis added.) TEO did not tender evidence to support the  
21 reservation of a credit for an insurance payment. The Summary  
22 Adjudication Order reserved only the three credits requested  
23 by TEO in its opposition papers: "AmeriPride's statement of  
24 costs may need to be reduced to account for funds received in  
25 settlements with other parties [Chromalloy and Petrolane] and  
26 ////

1 for the economic value of the treated water." (Dkt. 735 at 46,  
2 emphasis added.)

3 After issuance of the Summary Adjudication Order (Dkt.  
4 735) and after the discovery and motion cut off dates in the  
5 Court's scheduling order (Dkt. 695) TEO filed a motion seeking  
6 to pursue discovery of insurance payments to AmeriPride. (Dkt.  
7 736) The Court issued an order denying such discovery. (Dkt.  
8 765.)

9 The Summary Adjudication Order decided the credits to be  
10 considered and those credits did not include insurance  
11 payments. Despite the Court's Summary Adjudication Order,  
12 proof of payment by AmeriPride (AM016337-AM016356 and  
13 AM016332-AM016336) of the Cal-Am Water Co. and the Huhtamaki  
14 settlement amounts and despite admissions by TEO and its expert  
15 Jim Warner, TEO persists in renewing its denials that  
16 AmeriPride has incurred these costs.

17 AmeriPride thinks this disputed evidentiary issue probably  
18 is best handled through a motion in limine.

19 iii. Anticipated dispute on the admissibility of  
20 certain opinion testimony by TEO's various experts on the  
21 grounds that the reports did not meet the disclosure  
22 requirements of the Federal Rules of Civil Procedure and the  
23 Court's Scheduling Order.

24 AmeriPride anticipates that it will object to the  
25 admissibility of certain opinion testimony by TEO's various  
26 experts on the grounds that the opinions were not submitted in

1 accordance with the Federal Rules of Civil Procedure and the  
2 Court's Scheduling Order (Dkt. 695) and, therefore, the  
3 evidence is inadmissible. Specifically, TEO failed to file  
4 with the Court any list of rebuttal experts or expert rebuttal  
5 reports, as required by the Court's Scheduling Order. (Dkt.  
6 695 at 5.) As such, AmeriPride asserts that the Court should  
7 not admit any expert rebuttal opinions offered by TEO's experts  
8 into evidence. In the Joint Pretrial Statement filed on  
9 September 19, 2011, the parties stipulated that: "Neither  
10 party will object to the other party's expert's rebuttal  
11 opinions or supplemental opinions given prior to the expert's  
12 deposition on the basis that such opinions should have been  
13 disclosed in the other party's initial expert witness  
14 disclosures." Because Jim Warner was disclosed properly as an  
15 initial expert for TEO in accordance with the requirements set  
16 forth in the Court's Scheduling Order, this anticipated  
17 evidentiary dispute does not extend to Mr. Warner's opinions.  
18 However, the Court should disregard entirely the rebuttal  
19 opinions of Anne Gates, Michael Kavanaugh, and Harvey  
20 Kreitenberg.

21 In addition, as to TEO's rebuttal expert, Harvey  
22 Kreitenberg, TEO has also failed to follow the disclosure  
23 requirements of Fed.R. Civ. P. 26(a)(2)(B)(iv), (v), and (vi).  
24 TEO did not disclose (1) a list of Mr. Kreitenberg's  
25 publications authored in the previous 10 years, (2) a list of  
26 any of the cases in which, during the previous 4 years, Mr.

1 Kreitenberg testified as an expert at trial or by deposition,  
2 or (3) a statement of the compensation to be paid to Mr.  
3 Kreitenberg for the study and testimony in the case.

4 AmeriPride thinks this disputed evidentiary issue probably  
5 is best handled through a motion in limine.

6 iv. Anticipated renewal of TEO's Daubert motion to  
7 exclude opinion testimony of AmeriPride's expert.

8 TEO's Daubert v. Merrell Dow Pharmaceuticals, Inc., 509  
9 U.S. 579 (1995) ("Daubert") motion to exclude opinion testimony  
10 of AmeriPride's expert, Anne M. Farr, Ph.D. (Dkt. 740 to Dkt.  
11 743-3) was denied by the Court, subject to the Court's further  
12 determinations as to the relevance and reliability of the  
13 challenged testimony at trial (Dkt. 765). It is anticipated  
14 that TEO will renew its objections to Dr. Farr's expert  
15 opinions at trial.

16 v. Anticipated dispute on the admissibility of  
17 certain opinion testimony by TEO's expert, Anne Gates, on the  
18 grounds that the opinions are not relevant and reliable in  
19 accordance with the requirements of Daubert.

20 Certain opinions of Anne Gates fail to meet the  
21 requirements for expert testimony under Federal Rule of  
22 Evidence ("FRE") 702, and of relevance and reliability as  
23 originally set forth in Daubert. FRE 702 provides that "a  
24 witness qualified as an expert by knowledge, skill, experience,  
25 training, or education, may testify" to "specific, technical  
26 or other specialized knowledge" if "(1) the testimony is based

1 on sufficient facts or data; (2) the testimony is the product  
2 of reliable principles and methods, and (3) the witness has  
3 applied the principles and methods reliably to the facts of the  
4 case." The trial court must assess the relevance and  
5 reliability of scientific evidence by considering "whether (1)  
6 the reasoning or methodology underlying the testimony is  
7 scientifically valid (the reliability prong); and (2) whether  
8 the reasoning or methodology properly can be applied to the  
9 facts in issue (the relevancy prong)." *Abarca v. Franklin*  
10 *Cnty. Water Dist.*, 761 F. Supp. 2d 1007, 1021 (E.D. Cal. 2011).

11 Anne Gates opined that a soil resistivity test performed  
12 at the AmeriPride facility provides evidence that there was  
13 exfiltration from the sump. (Rebuttal Report of Anne Gates at  
14 7.) But, Anne Gates's opinion is directly contradicted by the  
15 opinions of another of TEO's experts, Harvey Kreitenberg. In  
16 his Declaration in Support of TEO's Opposition to Plaintiff's  
17 Motion for Summary Judgment, Mr. Kreitenberg stated  
18 unequivocally that "soil resistivity testing is not a  
19 recognized method utilized to verify a liquid waste piping  
20 system's integrity." (Dkt. 719 8 at 4.) Mr. Kreitenberg  
21 repeated this statement in his expert report dated April 13,  
22 2011, and confirmed the opinion that soil resistivity testing  
23 is not a reliable method for determining the integrity of any  
24 underground object or structure, including sumps. (See  
25 Deposition of Harvey Kreitenberg (April 28, 2011) 37:8-42:7.)

26 ////

1 The self-contradictory admissions of TEO's experts cannot meet  
2 the reliability prong, and so must be stricken.

3 Similar to TEO's Daubert motion, this issue is probably  
4 best handled after Ms. Gates' testimony, if her opinions are  
5 not stricken as a result of the anticipated evidentiary dispute  
6 about TEO's failure to follow disclosure requirements for  
7 expert reports discussed in Section 5.a.iii., above.

8 vi. Anticipated dispute on the whether or not  
9 AmeriPride should be precluded from relief from its response  
10 to TEO's Request for Admission.

11 TEO claims that between 1983 and 1985, AmeriPride's  
12 employees or agents detected the odor of PCE during the  
13 excavation of the wash aisle trench. However, TEO's expert,  
14 Jim Warner, testified that this event must have taken place  
15 prior to AmeriPride's taking ownership of the Facility in 1983.  
16 Warner Depo. at 129:7-22.) AmeriPride initially admitted this  
17 fact in its March 1, 2011 initial responses to TEO's requests  
18 for admissions. This admission was based on the first  
19 deposition of Mr. Smith. However, Mr. Smith testified  
20 differently on refreshed recollection in a second deposition:

21 Q. MR. KAPLAN: Was the expansion in connection with  
22 the Community acquisition before the facility was  
23 purchased by American Linen ?

24 THE WITNESS: Yes.

25 (Robert Smith May 3, 2006 Depo. at 14:11-19). John Dankoff  
26 testified to the same effect. (Dankoff May 3, 2006 Depo. at



1 9:16-10:18; 34:1-14.) Mr. Smith's testimony as a whole,  
2 coupled with Mr. Dankoff's testimony, makes clear that the wash  
3 water trench expansion at the Facility that is the subject of  
4 TEO's Requests for Admissions 28-30 and 33 took place during  
5 VIS, Inc.'s ownership and operation of the Facility, not  
6 AmeriPride's.

7 On April 22, 2011, AmeriPride amended its responses to  
8 reflect Mr. Smith's testimony at his second deposition. TEO  
9 had both depositions of Mr. Smith. In addition, AmeriPride  
10 served amended interrogatory responses setting forth the facts  
11 upon which AmeriPride denied TEO's Requests for Admissions  
12 28-30 and 33. Based on the state of the evidence and TEO's  
13 expert's own understanding of the evidence, AmeriPride requests  
14 that it be relieved from the admission pursuant to Fed. R. Civ.  
15 P. 36(b). According to Rule 16(e), "Subject to Rule 16(e), the  
16 court may permit withdrawal or amendment if it would promote  
17 the presentation of the merits of the action and if the court  
18 is not persuaded that it would prejudice the requesting party  
19 in maintaining or defending the action on the merits." Fed.  
20 R. Civ. P. 36(b). The Court has not issued a final pretrial  
21 conference order, so it is not limited by Fed. R. Civ. P.  
22 16(e). AmeriPride maintains that allowing this request would  
23 not prejudice TEO in maintaining or defending the action on the  
24 merits. AmeriPride asked TEO to agree, but TEO refused.

25 AmeriPride thinks this disputed evidentiary issue probably  
26 is best handled through a motion in limine.

1           vii. AmeriPride awaits the Court's direction on how  
2 best to handle these issues.

3           Based on the Court's ruling denying TEO's Daubert motion  
4 (Dkt. 765), AmeriPride infers that the Court may be inclined  
5 to decide such issues at the final pretrial conference or  
6 during the trial. However, AmeriPride is prepared to file  
7 motions should the Court choose to resolve these issues in that  
8 manner.

9           b. Plain, concise summary of any reasonably anticipated  
10 disputes concerning physical and demonstrative evidence and a  
11 statement whether each such dispute should be resolved by  
12 motion in limine, briefed in the trial brief, or addressed in  
13 some other manner.

14           AmeriPride anticipates that it will object to the use by  
15 TEO of certain photographs taken during the April 23, 2011  
16 inspection of the Facility ("inspection photographs"). In a  
17 letter dated August 10, 2011, TEO provided to AmeriPride a  
18 compact disc containing inspection photographs. Representing  
19 TEO during the inspection of the Facility were TEO's counsel,  
20 Ron Bushner and Fred Blum, and TEO's experts, Jim Warner, Anne  
21 Gates, and Dr. Michael Kavanaugh. Pursuant to the Court's  
22 Scheduling Order, "Experts will not be permitted to testify at  
23 the trial as to any information gathered or evaluated, or  
24 opinion formed, after the deposition taken subsequent to  
25 designation." (Dkt. 695 at 5.) However, none of TEO's experts  
26 included any mention of the inspection photographs in their

1 reports, and as Anne Gates made clear during her deposition,  
2 she did not review the photographs before her deposition:  
3 "[P]art of this [inspection] was Fred [Blum] took a bunch of  
4 photos. So I think my idea was at some point I'd get a copy  
5 of the photos and I could annotate the photos with the relative  
6 information." (Gates Depo. 69:11-15.) Therefore, although the  
7 inspection photographs may represent "information gathered"  
8 prior to the depositions of TEO's experts, it is clear that any  
9 evaluation or any opinions formed with respect to the  
10 inspection photographs by TEO's experts occurred after their  
11 depositions were taken. As such, TEO's experts may not testify  
12 as to the inspection photographs at trial. AmeriPride believes  
13 this dispute would be best handled by a motion in limine.

14 c. Plain, concise summary of any reasonably anticipated  
15 disputes concerning the use of special technology at trial,  
16 including computer animation, video discs, and other high  
17 technology and a statement whether each such dispute should be  
18 resolved by motion in limine, briefed in the trial brief, or  
19 addressed in some other manner.

20 AmeriPride expects to present its case using electronic  
21 means and trial software known as Trial Director. This  
22 technology allows for a much quicker trial presentation. In  
23 addition, AmeriPride plans to use PowerPoint for its opening  
24 statement and closing argument. AmeriPride and TEO are  
25 discussing the possible sharing of trial presentation hardware  
26 and software and a person to run the technology during trial.

1 AmeriPride does not expect any disputes concerning the use of  
2 special technology.

3 a. Anticipated disputes concerning admissibility of live  
4 and deposition testimony.

5 i. Anticipated disputes regarding AmeriPride's expert  
6 Anne Farr's testimony.

7 1. TEO's renewed Daubert motion.

8 The Court's July 19, 2011 Order stated: "With respect to  
9 the Daubert motion, the court may make further determinations  
10 as to the relevance and reliability of the challenged testimony  
11 at trial." (Dkt 765.) Accordingly, at the trial, TEO requests  
12 that the Court reconsider the arguments raised in its Daubert  
13 motion challenging the testimony of AmeriPride's expert Dr.  
14 Anne Farr. (Dkt. 740-44, 755, 762-65.)

15 Since the matter has been fully briefed, TEO defers to the  
16 Court as to when and how this dispute should be resolved.

17 2. Farr's testimony must be limited to opinions  
18 previously offered in written reports or deposition.

19 TEO anticipates AmeriPride will offer Dr. Farr to testify  
20 regarding sources of VIS's PCE contamination at the Site about  
21 which she did not previously render opinions. The Court should  
22 prohibit Dr. Farr from offering any such testimony. The  
23 Court's Pretrial Scheduling Order is clear: "Experts will not  
24 be permitted to testify at the trial as to any information  
25 gathered or evaluated, or opinion formed, after deposition  
26 taken subsequent to designation." (Dkt. 695, p.5.)

1 Dr. Farr previously provided opinions about four main  
2 occasions when PCE was spilled during VIS's operation of the  
3 Facility: (1) a pipe breaking in 1980 or 1981 while a storage  
4 tank for DNAPL PCE was being moved; (2) an overfill of a PCE  
5 storage tank in the late 1970s when a delivery truck driver  
6 left the pump running while filling the PCE storage tank  
7 causing DNAPL to spill across the floor and into a nearby  
8 canal; (3) a boil-over in the late 1970s resulting in PCE being  
9 released; and (4) an approximately 20 gallon accidental  
10 overflow of PCE between 1976 and 1981 when operators forgot to  
11 turn off the pump. (Dkt. 755-1.)

12 Beyond these occasions, Dr. Farr has not previously  
13 rendered any opinions in written reports or deposition  
14 regarding VIS's contribution to PCE at the Site. However, TEO  
15 anticipates Dr. Farr may testify at trial that additional  
16 sources of PCE contamination are attributable to VIS.  
17 Specifically, that the wastewater system during VIS's operation  
18 resulted in a material contribution of PCE to the subsurface.  
19 (Dkt. 770, p. 31.) Dr. Farr never offered an opinion on this  
20 issue. The only time the issue was addressed is in Dr. Farr's  
21 Supplemental Rebuttal Expert Report, in which she asserted that  
22 TEO's expert, Anne Gates, must conclude "release of wastewater  
23 during VIS, Inc.'s operation of the Facility resulted in the  
24 migration of PCE through the vadose zone and into groundwater  
25 prior to AmeriPride purchasing the Facility." (Dkt. 731, p.

26 ////

1 11.) Dr. Farr's opinion is not that VIS's wastewater is a  
2 source, but that Anne Gates' opinion must be that it is.

3 Were Dr. Farr to offer such an opinion at trial concerning  
4 the wastewater system or any new source, it would be for the  
5 first time. This is not permitted. (Dkt. 695, p. 5.)  
6 Accordingly, Dr. Farr must be precluded from testifying about  
7 the wastewater source or any other source of VIS' possible  
8 contamination other than those to which she previously  
9 testified.

10 This anticipated dispute should be resolved through a  
11 motion in limine.

12 ii. Anticipated dispute regarding the relevance of Mark  
13 Bryant's testimony.

14 The Court already has ruled that the response costs  
15 AmeriPride incurred under its section 107 action are compliant  
16 with the NCP. The only NCP issue that remains relates to those  
17 costs claimed under section 113. TEO anticipates AmeriPride  
18 will attempt to offer Mark Bryant to provide an expert opinion  
19 as to whether AmeriPride's claimed section 113 costs complied  
20 with the NCP. However, AmeriPride did not designate Mr. Bryant  
21 to testify regarding NCP Compliance for any costs relevant to  
22 the section 113 claim. He should be prohibited from doing so  
23 at trial.

24 This anticipated dispute should be resolved through a  
25 motion in limine.

26 ////



1       iii. Anticipated dispute regarding testimony of John  
2 Poulos and Bruce Telles.

3       Based on a review of AmeriPride's Appendix 1, TEO  
4 anticipates AmeriPride will attempt to call attorneys John  
5 Poulos and Bruce Telles to testify. Mr. Poulos at one time  
6 appeared for TEO as counsel of record. Mr. Telles is an  
7 attorney that represents some of TEO's potential insurers.

8       AmeriPride can present no evidentiary need that would  
9 justify requiring either of these witnesses taking the stand.  
10 Lawyers representing litigants "should not be called as witness  
11 in trials involving those litigations if such testimony can be  
12 avoided consonant with the end of obtaining justice." Ramey  
13 v. Dist. 141, Intern. Ass'n of Machinists and Aerospace  
14 Workers, 378 F.3d 269, 282 (2004). Courts agree that an  
15 attorney's testimony should be the last resort and certainly  
16 only allowed if there is no other way to get the facts sought.  
17 Tavy v. American Red Cross in Greater N.Y., 618 N.Y.S. 2d 25  
18 (N.Y. App. Div. 1994).

19       Before either of these attorney witnesses is allowed to  
20 testify, AmeriPride should be required to explain the  
21 significance of the matters to which each might testify, the  
22 weight the witness' testimony has in resolving these matters,  
23 and the availability of other witnesses or documentary evidence  
24 by which these matters could be independently established.

25       This anticipated dispute should be resolved through a  
26 motion in limine.

1       iv. Anticipated dispute regarding standard of care  
2 testimony.

3       TEO anticipates that AmeriPride will attempt to introduce  
4 testimony regarding VIS' alleged failure to abide by the  
5 standard of care in its operation at the Site. Disputed Fact  
6 No. ("DF") 42 (Dkt. 770, p. 31.) AmeriPride has not retained  
7 an expert to provide an opinion on this issue, and no such  
8 opinion has been disclosed. Accordingly, the standard of care  
9 is not at issue and, at trial, AmeriPride must be precluded  
10 from offering any testimony on this issue. (Dkt. 695, pp.  
11 5-6.)

12       This anticipated dispute should be resolved through a  
13 motion in limine.

14       v. Anticipated dispute regarding testimony related to  
15 TEO's insurance coverage.

16       AmeriPride argues that TEO could have participated in  
17 remediation and investigation at the Site because "TEO clearly  
18 has insurance and its insurers could have enabled TEO's  
19 participation . . . ." (Dkt. 770, p. 24.) TEO anticipates  
20 AmeriPride will attempt to offer testimony at trial regarding  
21 TEO's insurance coverage. AmeriPride should be prevented from  
22 offering any such testimony because the fact does not relate  
23 or correspond to an element of any relevant cause of action.  
24 (Dkt. 695, p. 7.) Namely, TEO's insurance is irrelevant to the  
25 issue of whether TEO had the legal or physical capacity or  
26 obligation to participate in Site remediation or to respond to

1 the CAOs issued by the RWQCB. TEO's insurers are not  
2 responsible parties under CERCLA nor were they, or could they,  
3 be named as dischargers by the RWQCB. AmeriPride has provided  
4 no legal support for its position that such a duty should be  
5 imposed on insurers.

6 This anticipated dispute should be resolved through a  
7 motion in limine.

8 b. Anticipated disputes concerning physical and  
9 demonstrative evidence.

10 i. Anticipated dispute concerning AmeriPride's Response  
11 to TEO's Request for Admissions.

12 TEO anticipates that AmeriPride will attempt to introduce  
13 evidence inconsistent with its Federal Rules of Civil Procedure  
14 Rule 36 admissions regarding a water trench excavation at the  
15 Site between 1983 and 1985. Should AmeriPride attempt to  
16 present such inconsistent evidence, TEO will move the Court to  
17 exclude it on the grounds that it is inadmissible under Fed.  
18 R. Civ. P. Rule 36(b).

19 In AmeriPride's March 1, 2011 Response to TEO's Request  
20 for Admissions, AmeriPride admitted that a wash trench  
21 excavation occurred during its operation of the Facility, and  
22 admitted the following facts related to this excavation:

23 REQUEST FOR ADMISSION NO. 28:

24 Admit that YOU undertook a wash trench excavation at the  
25 FACILITY between 1983 and 1985.

26 ////

1       RESPONSE TO REOUEST NO. 28:

2       AmeriPride objects to the term "wash trench excavation"  
3 as vague and ambiguous. Subject to and without waiving this  
4 objection, AmeriPride responds as follows:

5       Admitted, that the wash aisle trench was extended between  
6 1983 and 1985.

7       REQUEST FOR ADMISSION NO. 29:

8       Admit that YOU detected PCE odors emanating from  
9 subsurface soil surrounding the wash trench excavation referred  
10 to in Request No. 28.

11       RESPONSE TO REOUEST NO. 29:

12       Denied. AmeriPride admits that a trench at the Facility  
13 was extended after AmeriPride purchased the Facility. The odor  
14 of PCE was detected during the excavation.

15       REQUEST FOR ADMISSION NO. 30:

16       Admit that one or more of YOUR employees or agents became  
17 sick as a result of the PCE odors emanating from the wash  
18 trench excavation referred to in Request No. 28.

19       RESPONSE TO REQUEST NO. 30:

20       Denied. AmeriPride admits that a trench at the Facility  
21 was extended after AmeriPride purchased the Facility. The odor  
22 of PCE was detected during the excavation. People in the office  
23 claimed the odor was giving them a headache, so they were sent  
24 home early.

25       A little over a month later, without leave of court,  
26 AmeriPride improperly filed Amended Responses denying these

1 facts. The Federal Rules do not allow for the unilateral  
2 withdrawal or modification of responses to requests for  
3 admissions. The Federal Rules of Civil Procedure Rule 36(b)  
4 requires a party to move the court for an order allowing it to  
5 amend or withdraw its admissions. AmeriPride failed to do so,  
6 and the motion cut-off date is now passed. Accordingly,  
7 AmeriPride is precluded from introducing any evidence,  
8 references to evidence, testimony, or argument inconsistent  
9 with its initial admissions regarding the wash trench  
10 excavation; and the Court should deem the matter admitted and  
11 conclusively established.

12 In AmeriPride's lengthy recitation of the alleged facts  
13 it now cites to justify a denial of these admissions, the  
14 crucial fact missing is an explanation as to why AmeriPride  
15 made these admissions in the first instance. All of the  
16 evidence upon which AmeriPride relies post hoc was available  
17 to it at the time it made its initial responses. The only  
18 thing that is different is AmeriPride's understanding of the  
19 impact of the admissions.

20 Once TEO, in its Opposition to AmeriPride's Motion for  
21 Summary Judgment, argued that based on the trenching activities  
22 AmeriPride should have notified the regulators immediately in  
23 1983 rather than 1997, AmeriPride realized the significance of  
24 its admissions regarding the wastewater trench. Shortly after,  
25 without leave of court, AmeriPride attempted to amend its  
26 responses to deny Responses No. 29-30 above. AmeriPride should

1 not be allowed to withdraw an admission simply because it  
2 discovered its admission had significance. TEO has relied on  
3 the admission and would be significantly prejudiced by  
4 AmeriPride's gamesmanship.

5 This anticipated dispute should be resolved through a  
6 motion in limine.

7 ii. Anticipated dispute regarding the responsive  
8 documents AmeriPride refused to produce on the basis of  
9 privilege.

10 TEO intends to file a motion to compel production of  
11 documents withheld by AmeriPride as privileged from its recent  
12 production of documents. While TEO is aware that the motion  
13 cut-off date has passed, the documents were just produced by  
14 AmeriPride, such that TEO could not have brought the motion  
15 earlier.

16 These documents include environmental audits conducted by  
17 the general manager of AmeriPride's facilities. These audits  
18 are dated as early as 1989 and were discussed in Bernard  
19 Berry's deposition as a series of questions regarding the  
20 various types of potential pollution issues at each facility.  
21 (Berry Deposition at 160:12-15). The withheld documents also  
22 include a memorandum compiling the information from these  
23 audits. AmeriPride raised objections based primarily on the  
24 attorney-client/work product privilege.

25 Because AmeriPride prepared these documents in the  
26 ordinary course of business on a quarterly basis since the late



1 1980s and the documents clearly were not prepared in  
2 anticipation of litigation, they are not protected by the work  
3 product doctrine. F. R. CIV. P. 26(b) (3). Further, because  
4 these documents would have been created in substantially  
5 similar form even if no litigation was anticipated to ensure  
6 compliance with the law, they are not work product documents.  
7 Lewis v. Wells Fargo & Co., 266 F.R.D. 433, 440 (N.D. Cal.  
8 2010).

9 Neither are AmeriPride's claims of attorney client  
10 privilege applicable to the documents at issue. The attorney  
11 client privilege protects from disclosure communications from  
12 a client to his attorney made in confidence and concerning  
13 legal advice. U.S. v. Tedder, 801 F. 2d 1437, 1441 (4th Cir.  
14 1986) (emphasis added) citing In re Special Grand Jury No.  
15 81-1, 676 F. 2d 1005, 1008-09 (4th Cir. 1982). However, the  
16 mere relationship of attorney client does not warrant a  
17 presumption of confidentiality. Id. For example, no attorney  
18 client privilege was found where FLSA audits had been conducted  
19 without sufficient information that the audits were to seek  
20 advice from counsel. Deel v. Bank of America, 227 F.R.D. 456,  
21 461 (W.D. Va. 2005). See also Lewis, 266 F.R.D. at 445  
22 (checklists prepared by managers were not privileged because  
23 they were not aware that the information was being requested  
24 in order to obtain legal advice).

25 The environmental audits withheld by AmeriPride are  
26 nothing more than a questionnaire that includes topics such as:

1 an employees' right to know; hazardous materials on site; noise  
2 levels; underground storage tanks; plant wastes and other  
3 topics. Nowhere is there any indication that this information  
4 is being sought to solicit legal advice. In fact, the audits  
5 do not even inform the employee that the legal department for  
6 the company prepared this form. Additionally, any memorandum  
7 prepared based on information provided in these audits is not  
8 privileged and should not be withheld because the facts relayed  
9 are not privileged.

10 The information is crucial to this litigation because it  
11 will establish that AmeriPride was aware of the potential for  
12 environmental contamination as early as the 1980s at each of  
13 its laundry facilities. At minimum, the court should conduct  
14 an in camera review of the documents withheld as privileged.

15 iii. Foundational issues related to the admissibility of  
16 evidence.

17 The parties will meet and confer to discuss how to handle  
18 any potential foundational issues regarding the admission of  
19 evidence. Preliminary discussions have already commenced and  
20 it is not anticipated that any significant difficulties will  
21 arise.

22 c. Anticipated disputes concerning the use of special  
23 technology.

24 TEO does not anticipate any disputes concerning the use  
25 of special trial technology. TEO and AmeriPride are discussing

26 ////

1 sharing trial presentation software and a trial software  
2 technician.

3 The parties are to bring on their motions within thirty  
4 (30) days, fifteen (15) days to respond, seven (7) days to  
5 close. The matter will be heard on December 16, 2011 at 10:00  
6 a.m.

7 **VII. SPECIAL FACTUAL INFORMATION**

8 Not applicable.

9 **VIII. RELIEF SOUGHT**

10 AmeriPride seeks the following relief:

11 1. Consistent with the Court's May 12, 2011 summary  
12 judgment order (Dkt. 735), that the Court issue a judgment:

13 a. For past response costs under CERCLA Section 107,  
14 award AmeriPride \$7,777,625.92, consisting of:

15 i. \$7,331,528.25 for NCP-compliant investigation  
16 and remediation costs AmeriPride paid through August 31,  
17 2010 (Dkt. 735 at 23);

18 ii. \$474,729.67 for oversight paid by AmeriPride  
19 to the RWQCB through September 13, 2010 (Dkt. 735 at 23);  
20 and,

21 iii. Less a credit for OU2 water reuse of \$28,632  
22 (Dkt. 745 at 46; Dkt. 707-1 at 61).

23 b. Awarding AmeriPride \$10.25 million dollars under  
24 CERCLA Section 113(f) for replacement water paid by  
25 AmeriPride (Dkt. 735 at 46; Dkt. 735 at 23), less a credit  
26

1 for settlements paid by Chromalloy and Petrolane of  
2 \$3,250,000 (Dkt. 735 at 46; Dkt. 707-10).

3 2. That the Court issue a declaratory judgment  
4 awarding to AmeriPride all or a portion of the response  
5 costs that it incurred since the dates identified in  
6 Paragraph 1.a., above, according to proof and that will be  
7 incurred in the future, consistent with the Court's Summary  
8 Adjudication Order (Dkt. 735) under CERCLA Section  
9 113(g)(2), except for that portion that TEO proves is not  
10 its allocated share (as determined at trial). (CERCLA §  
11 113(g)(2), 42 U.S.C. § 9613(g)(2); Dkt. 735 at 45);

12 3. That the Court award AmeriPride prejudgment  
13 interest on all response costs incurred and any other  
14 interest according to law. CERCLA § 107(a)(4); 42 U.S.C. §  
15 9607(a)(4).

16 4. That the Court award AmeriPride such other damages  
17 as may be provided by law in an amount according to proof.

18 5. For retention of jurisdiction by the Court over  
19 this matter until such time as AmeriPride has completed the  
20 remediation of the Hazardous Substances (including DNAPL  
21 PCE) at the Site.

22 6. For costs of suit; and;

23 7. Such other relief as the Court deems just and  
24 proper.

25 TEO seeks the following relief:

26 ////

1        1.     Contribution for AmeriPride's share under CERCLA §  
2     113(f), 42 U.S.C. § 9613(f);

3        2.     Costs of suit; and

4        3.     Such other relief as the Court deems just and  
5     proper.

6                                **IX.   POINTS OF LAW**

7        The elements, standards, and burdens of proof for  
8     claims under CERCLA.

9        **a.Statement of the Legal Theory or Theories of Recovery or**  
10                                **of Defense**

11                        **i.     CERCLA Sections 107 and 113(g) (2)**

12        The claims at issue for trial are CERCLA claims, all to  
13     be decided under federal law. The Court already has addressed  
14     these claims in its Summary Adjudication Order (Dkt. 735).  
15     AmeriPride believes the Court has correctly stated the  
16     applicable law in its Summary Adjudication Order relative to  
17     CERCLA Sections 107 and 113(g) (2) at Dkt. 735 at 4-8, 25-35,  
18     and 45.

19                                **ii.   CERCLA Section 113(f)**

20        As to allocation between AmeriPride and TEO, CERCLA  
21     Section 113(f) provides the applicable standard. CERCLA  
22     Section 113(f) (1) provides "In resolving contribution claims,  
23     the court may allocate response costs among liable parties  
24     using such equitable factors as the court determines are  
25     appropriate." 42 U.S.C. § 9613(f) (1). "This language gives  
26     district courts discretion to decide what factors ought to be

1 considered, as well as the duty to allocate costs according to  
2 those factors." Boeing Co. v. Cascade Corp., 207 F. 3d 1177,  
3 1187 (9th Cir. 2000).

4 Among the factors courts often consider are the so-called  
5 "Gore factors." Bell Petroleum Services, Inc. v. Sequa Corp.,  
6 3 F. 3d 889, 899-900 (5th Cir.1993) and Centerior Service Co.  
7 v. Acme Scrap Iron & Metal Corp., 153 F. 3d 344, 354 (6th Cir.  
8 1998). See also United States v. Newmont USA Ltd., No.  
9 CV-05-020-JLQ, 2008 WL 4621566 at \*58 (E.D. Wash. Oct. 17,  
10 2008). The "Gore Factors" are: (1) the parties' ability to  
11 demonstrate that their contribution to discharge, release, or  
12 disposal of hazardous waste can be distinguished; (2) amount  
13 of hazardous waste involved; (3) degree of toxicity of  
14 hazardous waste; (3) degree of involvement by parties in  
15 generation, transportation, treatment, storage, or disposal of  
16 hazardous waste; (4) degree of care exercised by parties with  
17 respect to hazardous waste concerns, taking into account  
18 characteristics of such hazardous waste; and, (5) the degree  
19 of cooperation by parties with federal, state or local  
20 officials to prevent any harm to public health or environment.  
21 Id.

22 Applying the Gore Factors, TEO should be allocated 100  
23 percent or nearly 100 percent of the response costs and  
24 settlements paid by AmeriPride as demonstrated in the chart  
25 below. The "Gore factors" are listed in the left-hand column

26 ////



1 of the chart that follows. Applying the "Gore factors" to the  
2 present case, none favor TEO:

3 "GORE FACTOR"

4 (1) the ability of the parties to demonstrate that their  
5 contribution to a discharge, release or disposal of a hazardous  
6 waste can be distinguished.

7 APPLICATION

8 Dry cleaning ceased at the Facility before AmeriPride took  
9 ownership. (Undisputed Fact 22.) AmeriPride did not use  
10 undissolved PCE or "DNAPL PCE" at the Facility. (Disputed  
11 Facts 35 and 36. AmeriPride asserts this fact already has been  
12 admitted by TEO for the reasons stated following Disputed Facts  
13 35 and 36.) TEO admits VIS, Inc. used DNAPL PCE for its dry  
14 cleaning operations. (Undisputed Fact 52.) TEO admits DNAPL  
15 PCE was released at the Facility during VIS, Inc.'s ownership  
16 and operations and entered the environment. (Undisputed Facts  
17 53-61.) TEO cannot distinguish any other contribution to the  
18 of PCE at the Facility from the contamination resulting from  
19 DNAPL PCE releases at the Facility by TEO's predecessor, VIS,  
20 Inc. (Undisputed Facts 70-73. See also Section (5) a.i  
21 [Anticipated Dispute about whether TEO can prove its share as  
22 required by CERCLA Section 113(f).].)

23 "GORE FACTOR"

24 (2) the amount of the hazardous waste involved.

25 APPLICATION

26 ////

1       The primary chemical of concern at the Site is PCE.  
2       (Undisputed Fact 33.) The vast majority of the dissolved PCE  
3       in the groundwater at the Site is the result of PCE dissolving  
4       into the groundwater from the DNAPL PCE present in the  
5       subsurface from releases of DNAPL PCE during the period of dry  
6       cleaning operations at the Facility. Accordingly, Dr. Farr  
7       opines that it is very unlikely that the investigation and  
8       remediation would have been required if not for the DNAPL PCE  
9       releases. (Disputed Fact 60. AmeriPride asserts this fact  
10      already has been admitted by TEO for the reasons stated  
11      following Disputed Fact 60.) The potential PCE contribution  
12      from AmeriPride's industrial wastewater releases is exceedingly  
13      small, even in a worst case scenario. (Disputed Fact 61.  
14      AmeriPride asserts this fact already has been admitted by TEO  
15      for the reasons stated following Disputed Fact 61.)

16      "GORE FACTOR"

17      (3) the degree of toxicity of the hazardous waste  
18      involved.

19      APPLICATION

20      The degree of toxicity of the hazardous waste factor does  
21      not apply as all the chemicals of concern are either PCE or its  
22      breakdown products. (Undisputed Facts 33-35.)

23      "GORE FACTOR"

24      (4) the degree of involvement by the parties in the  
25      generation, transportation, treatment, storage, or disposal of  
26      the hazardous waste.

1 APPLICATION

2 TEO's predecessor, VIS, Inc., was the operator and owner  
3 of the Facility during the releases of DNAPL PCE at the  
4 Facility. (Undisputed Fact 52-62.)

5 "GORE FACTOR"

6 (5) the degree of care exercised by the parties with  
7 respect to the hazardous waste concerned, taking into account  
8 the characteristics of such hazardous waste.

9 APPLICATION

10 While VIS, Inc. accidentally released DNAPL PCE at the  
11 Facility (Undisputed Facts 58-62), TEO cannot demonstrate that  
12 VIS, Inc. exercised a high degree of care with DNAPLPCE, taking  
13 into account the characteristics of PCE. (Disputed Fact 42.  
14 AmeriPride asserts this fact already has been admitted by TEO  
15 for the reasons stated following Disputed Fact 42.)

16 "GORE FACTOR"

17 (6) the degree of cooperation by the parties with  
18 Federal, State, or local officials to prevent any harm to the  
19 public health or the environment.

20 APPLICATION

21 AmeriPride has complied with the RWQCB's orders from the  
22 outset, whereas neither VIS, Inc. nor TEO participated in the  
23 investigation and remediation of the contamination caused by  
24 the DNAPL PCE released by VIS, Inc. at and from the Facility.  
25 (Undisputed Facts 86-88.) In fact, TEO admitted it refused to  
26 cooperate with the RWQCB. (Disputed Fact 22. AmeriPride

1 asserts this fact already has been admitted by TEO for the  
2 reasons stated following Disputed Fact 22.) AmeriPride has paid  
3 for all the investigation, remediation, regulatory oversight  
4 (Disputed Facts 5-7, 23 which AmeriPride asserts this fact  
5 already has been admitted by TEO for the reasons stated  
6 following Disputed Facts 5-7 and 23) and all the replacement  
7 water costs. (Undisputed Facts 91-92; Disputed Facts 9-19.  
8 AmeriPride asserts this fact already has been admitted by TEO  
9 for the reasons stated following Disputed Facts 9-19.)

10       Fault also has been used by a number of courts as a basis  
11 for allocation under CERCLA Section 113(f). Kalamazoo River  
12 Study Group v. Rockwell International Corporation, 274 F. 3d  
13 1043, 1046-48 (6th Cir. 2001); PMC, Inc. v. Sherwin-Williams  
14 Co., 151 F. 3d 610, 616 (7th Cir.1998); Env'tl. Transp. Sys.,  
15 Inc. v. ENSCO, Inc., 969 F. 2d 503, 512 (7th Cir.1992); Gopher  
16 Oil Co., Inc. v. Union Oil Co. of California, 955 F. 2d 519,  
17 526-27 (8th Cir. 1992); Appleton Papers Inc. v. George A.  
18 Whiting Paper Co., No. 08-C-16, 2009 WL 5064049 at \*25 (E.D.  
19 Wis. Dec. 16, 2009); Norfolk S. Ry. Co. v. Gee Co., No. 98 C  
20 1619, 2002 WL 31163777 at \*33-34 (N.D. Ill. Sept. 30, 2002);  
21 Am. Color & Chem. Corp. v. Tenneco Polymers, Inc., 918 F. Supp.  
22 945, 959-60 (D.S.C. 1995); and United States v Stringfellow,  
23 No. CV 83-2501 JMI, 1993 WL 565393 at \*110-12 (C.D. Cal. Nov.  
24 30, 1993). TEO's predecessor, VIS, Inc., had releases of DNAPL  
25 PCE which sank all the way to the groundwater (disputed by  
26 TEO's expert) and also which partitioned into soil vapor and

1 reached groundwater (not disputed by TEO's expert). TEO claims  
2 AmeriPride had the same sort of wastewater releases as VIS,  
3 Inc. that drove DNAPL PCE released by VIS, Inc. to the  
4 groundwater.

5 **iii.Burden of Proof**

6 The party alleging a CERCLA Section 113(f) claims bears  
7 the burden of proof proving share. Minyard Enterprises, Inc.  
8 v. Southeastern Chemical & Solvent Co., 184 F.3d 373, 385 (4th  
9 Cir. 1999). Thus, as to AmeriPride's response costs claimed  
10 under CERCLA Section 107 for which the Court has already ruled  
11 TEO is liable, TEO bears the burden of proving AmeriPride's  
12 share. As for AmeriPride's settlements under CERCLA,  
13 AmeriPride bears the burden of proving TEO's share.

14 **b.Points of Law (Substantive or Procedural) that Are or May**  
15 **Reasonably Be Expected to Be in Controversy**

16 Points of law (substantive or procedural) that are or may  
17 reasonably be expected to be in controversy, citing the  
18 pertinent statutes, ordinances, regulations, cases, and other  
19 authorities relied upon follows:

20 1. AmeriPride expects that TEO will dispute the  
21 following determinations in the Court's May 12, 2011 Summary  
22 Adjudication Order (Dkt. 735):

23 a. The Court held: "AmeriPride's response costs were  
24 incurred in substantial compliance with the national  
25 contingency plan." (Dkt. 735 at 35.)

26 ////

1       b.    "TEO has failed to raise a triable question as to  
2 whether discharging the contaminated water directly into the  
3 sanitary sewer would have been a cheaper treatment option."  
4 (Dkt. 735 at 37.)

5       c.    "Warner states 'I was not able to determine whether  
6 competitive bidding was used for construction work at the site.  
7 If not, it is possible that the costs could have been reduced.'  
8 Warner Decl. 49 (Dkt. 718). This is insufficient to raise a  
9 triable question. Matsushita Elec. Indus. Co. v. Zenith Radio  
10 Corp., 475 U.S. 574, 585-86 (1986) ('metaphysical doubt'  
11 insufficient to defeat motion for summary judgment')." (Id.)

12       d.    "Warner also argues that, although the Regional Water  
13 Quality Control Board requires AmeriPride to monitor the plume  
14 of groundwater contamination on a quarterly basis, AmeriPride  
15 'should have been more aggressive in negotiating [with the  
16 Board for] a semiannual or even annual monitoring program.'  
17 Warner Decl. 49. This does not raise a triable issue. It  
18 appears to the court wholly speculative as to whether such an  
19 aggressive posture would have influenced the agency." (Id. at  
20 37-38.)

21       e.    "TEO argued that the claim was barred by AmeriPride's  
22 failure to report PCE contamination in 1983. Assuming that  
23 AmeriPride was aware of the contamination at that time, any  
24 failure to report does not demonstrate that AmeriPride was not  
25 in substantial compliance with the national contingency plan,

26    ////



1 as explained by the Ninth Circuit in *NL Industries*, 792 F. 2d  
2 896." (Id. at 42.)

3 The parties shall also brief those matters set forth in  
4 court on October 7, 2011 during the examination of purported  
5 disputed and undisputed facts.

6 ANY CAUSES OF ACTION OR AFFIRMATIVE DEFENSES NOT  
7 EXPLICITLY ASSERTED IN THE PRETRIAL ORDER UNDER POINTS OF LAW  
8 AT THE TIME IT BECOMES FINAL ARE DISMISSED, AND DEEMED WAIVED.

9 **X. ABANDONED ISSUES**

10 A statement of all issues raised by the pleadings that  
11 have been abandoned, including, for example, claims for relief  
12 and affirmative defenses is below:

13 1. Only CERCLA claims remain and the Court found TEO  
14 liable under CERCLA in the Summary Adjudication Order. Dkt.  
15 735. In addition, TEO admits all the necessary elements of  
16 AmeriPride's CERCLA claims. TEO's Answer, Dkt. 756 56, 66,  
17 67, and 71-74. Accordingly, TEO should abandon its First  
18 Defense (Failure To State A Cause Of Action).

19 2. On July 18, 2011, AmeriPride agreed to withdraw its  
20 state law claims, namely the Third, Fourth, Fifth, Sixth,  
21 Seventh, Eighth, Ninth, Tenth and Eleventh Claims for Relief  
22 in its Fourth Amended Complaint (Dkt. 750).

23 3. In light of AmeriPride's July 18, 2011 withdrawal of  
24 its state law claims, during the meet and confer for the joint  
25 pretrial statement, counsel for TEO has informed counsel for  
26 AmeriPride that TEO will withdraw affirmative defenses that are

1 not applicable to CERCLA Section 107 or CERCLA Section 113(f).  
2 TEO has not done so yet.

3 4. There is no evidence that AmeriPride's CERCLA claims  
4 are barred by the applicable statute of limitations.  
5 Accordingly, TEO should abandon its Thirteenth Defense (Statute  
6 of Limitations).

7 5. Affirmative defenses are often pleaded in an answer  
8 to a complaint as a precaution in order to avoid an inadvertent  
9 waiver. However, after discovery has been completed,  
10 affirmative defenses are reassessed. The following affirmative  
11 defenses should be abandoned by TEO for the following reasons:

12 a. There is no evidence that natural gas releases caused  
13 any response costs. Accordingly, TEO should abandon its  
14 Thirtieth Defense (Natural Gas Exclusion).

15 b. There is no evidence that TEO is an innocent  
16 landowner. Further, TEO admits its predecessor, VIS, Inc., was  
17 the operator and owner of the Facility during the release of  
18 DNAPL PCE at the Facility. (Dkt. 756 57.) Accordingly, TEO  
19 should abandon its Forty-Second Defense (Innocent Landowner).

20 c. TEO has also asserted an affirmative defense of  
21 failure to comply with the NCP (Twenty-Second Defense). TEO's  
22 Twenty-Second Defense overlaps with its Forty-Sixth Defense  
23 (Failure to Give Notice). Accordingly, TEO should abandon its  
24 Forty-Sixth Defense (Failure to Give Notice).

25 ////

26 ////

1       d. There is no evidence that TEO had a state permitted  
2 release. Accordingly, TEO should abandon its Fifty-Fourth  
3 Defense (State Permitted Release).

4       e. There is no evidence that TEO had a federally  
5 permitted release. Accordingly, TEO should abandon its  
6 Fifty-Fifth Defense (Federally Permitted Release).

7       6. In addition to the defenses asserted in its Answer  
8 to AmeriPride's Fourth Amended Complaint, TEO also has  
9 non-CERCLA claims in its operative counterclaims against  
10 AmeriPride (Dkt. 125), filed on February 23, 2001. However,  
11 the only viable claim for relief TEO has is its CERCLA Section  
12 113(f) claim for the reasons discussed below:

13       a. In California, the right to contribution accrues at  
14 the time of payment. Cal. Civ. Proc. Code § 875(c) ("Such  
15 right of contribution may be enforced only after one tortfeasor  
16 has, by payment, discharged the joint judgment or has paid more  
17 than his pro rata share thereof. It shall be limited to the  
18 excess so paid over the pro rata share of the person so paying  
19 and in no event shall any tortfeasor be compelled to make  
20 contribution beyond his own pro rata share of the entire  
21 judgment.") See also *California v. Randtron*, 69 F. Supp. 2d  
22 1264, 1273 n. 8 (E.D. Cal. 1999) ("Under California law, '[t]he  
23 right of contribution accrues at the time of payment.'"), and  
24 *Jackson v. Lacy*, 37 Cal. App. 2d 551, 559 (Cal. Ct. App. 1940)  
25 ("It is elementary that a party acquires a right of  
26 contribution as soon as he pays more than his share but not

1 until then".) Similarly, the right to equitable indemnity  
2 flows from payment of a joint legal obligation on another's  
3 behalf. Cal. Civ. Code § 1432. See also Expressions at Rancho  
4 Niguel Ass'n v. Ahmanson Developments, Inc., 86 Cal. App. 4th  
5 1135, 1139 (Cal. Ct. App. 2001) ("The right to indemnity flows  
6 from payment of a joint legal obligation on another's  
7 behalf."), and Union Pac. Corp. v. Wengert, 79 Cal. App. 4th  
8 1444, 1447-48 (Cal. Ct. App. 2000).

9 b. TEO has made no payment. (Undisputed Facts 87-88.)  
10 TEO has not paid any money for investigation or clean up, for  
11 RWQCB oversight costs, or for replacement water as a result of  
12 the DNAPL PCE released by VIS, Inc. (Id.) Accordingly, TEO  
13 should abandon its Second Counterclaim (Contribution under HSAA  
14 Section 25363(e)); Third Counterclaim (Comparative Equitable  
15 Indemnity); and, Fourth Counterclaim (Equitable Apportionment  
16 and Contribution). TEO's counsel informed counsel for  
17 AmeriPride during the meet and confer process for the joint  
18 pretrial statement that TEO planned to abandon these claims.  
19 TEO has not yet done so.

20 The following is a statement of the issues raised by TEO's  
21 pleadings that have been abandoned. However, TEO abandons  
22 these affirmative defenses based solely on the definitions  
23 under CERCLA. TEO does not abandon its right to raise issues,  
24 both factual and legal, subsumed by any of the following  
25 affirmative defenses:

26 ////

- 1 i. Failure to State a Cause of Action;
- 2 ii. Uncertainty;
- 3 iii. Assumption of Risk;
- 4 iv. Independent, Intervening and/or Superseding Cause;
- 5 v. Cause in Fact;
- 6 vi. Proximate Cause/Substantial Factor;
- 7 vii. AmeriPride's Negligence;
- 8 viiii. Conformance with Statute, Regulation, and  
9 Industry Standards;
- 10 ix. Estoppel;
- 11 x. Release or Waiver; Mitigation of Damages;
- 12 xi. Statutes of Limitation;
- 13 xii. Laches;
- 14 xiii. De Minimis Effect;
- 15 xiv. Failure to Join Necessary and/or Indispensible  
16 Parties;
- 17 xv. CERCLA Section 107(b) Defense and Health and Safety  
18 Code Section 25323.5, Based on Act of God;
- 19 xvi. CERCLA Section 107(b)(4) Defense and Health and  
20 Safety Code Section 25323.5, Based on Combination of an Act of  
21 God, an Act of War and/or Actions of a Third-Party;
- 22 xvii. Unclean Hands;
- 23 xviii. No Contribution;
- 24 xix. Petroleum Exclusion;
- 25 xx. Natural Gas Exclusion;
- 26 xxi. Violation of Regulatory Standards;

1       xxii.       Imputation of Fault to AmeriPride;  
2       xxiii.      Other Defendants and Third Parties;  
3       xxiv.       Due Care;  
4       xxv.       Speculative Damages;  
5       xxvi.       Preemption;  
6       xxvii.      Innocent Landowner;  
7       xxviii.     Standing;  
8       xxix.       Primary Jurisdiction;  
9       xxx.        Failure to Perform Conditions Precedent or Exhaust  
10 Remedies;  
11       xxxi.       Failure to Give Notice;  
12       xxxii.      Lack of Legal Duty;  
13       xxxiii.     Justified Conduct;  
14       xxxiv.      Unjust Enrichment;  
15       xxxv.       Offset;  
16       xxxvi.      United States and California Constitutions;  
17       xxxvii.     Actions Pursuant to Local, State or Federal  
18 Authority; State Permitted Release;  
19       xxxviii.    Federally Permitted Release;  
20       xxxix.      Additional Defenses; and  
21       xl.         Incorporation of Cross-Claim.

22       The defendant will dismiss, without prejudice, the state  
23 law based claims.

24                               **XI.   WITNESSES**

25       Plaintiff anticipates calling the following witnesses:  
26       See attachment "A".



1 Defendant anticipates calling the following witnesses:

2 See attachment "B".

3 The parties agree to the following stipulations:

4 AmeriPride and TEO have agreed to the following  
5 stipulations:

6 a. Stipulation pursuant to the court's order entered on  
7 July 8, 2011:

8 "The court will instruct the jury and/or the fact finder  
9 will find that the removed pipes leaked PCE-contaminated  
10 wastewater into the into the soil and groundwater and that this  
11 was a cause of the contamination on the Huhtamaki property.  
12 AmeriPride will be prohibited from presenting any evidence  
13 which denies that AmeriPride contributed to the soil and  
14 groundwater contamination. However, the parties agree that  
15 there is a dispute about the amount of contamination caused by  
16 releases of wastewater during both VIS, Inc.'s and AmeriPride's  
17 operation of the Facility that must be resolved by the trier  
18 of fact." This stipulation as been entered as an order of the  
19 Court. (Dkt. 763). The fact to be entered pursuant to the  
20 stipulation and order is Undisputed Fact 69.

21 b. Stipulation on Use of Deposition Testimony at Trial:

22 In order to facilitate a more efficient trial, the parties  
23 have stipulated that:

24 1. Deposition testimony given in this civil action,  
25 including any civil action with which this civil action has

26 ////

1 been consolidated, may be used at trial in lieu of calling a  
2 live witness;

3 2. The parties will provide notice of their intent to  
4 call a witness by deposition no later than 30 days after the  
5 final pretrial conference;

6 3. Designation of deposition testimony will be as  
7 follows:

8 a. The party proposing to call a witness by deposition  
9 shall designate those portions of the deposition testimony  
10 within 15 days after giving notice of intent to call the  
11 witness by deposition;

12 b. The other party shall provide counter designations  
13 of deposition testimony, along with any objections to the  
14 designated deposition testimony 15 days later;

15 c. Any objections to the counter designated deposition  
16 testimony shall be served and filed 7 days thereafter; and,

17 d. Written responses to any objections shall be filled  
18 7 days thereafter;

19 4. The designation of any party of its intent to utilize  
20 the deposition testimony of a witness shall not prohibit the  
21 any party from calling that witness to testify live at trial,  
22 provided the live testimony is not cumulative; and,

23 5. The deposition testimony designated by the parties  
24 shall be read into the record at trial, unless the Court  
25 decides to accept the testimony as a written submission.

26 ////

1           c.    **Stipulation on Use of Demonstrative Evidence at**  
2               **Trial:**

3           In order to facilitate a more efficient trial, the parties  
4           have stipulated that:

5           1.    Demonstrative exhibits do not need to be listed on  
6           the list of trial exhibits;

7           2.    Any demonstrative exhibits a party plans to use at  
8           trial will be submitted to the other party by no later than 30  
9           days before the first scheduled trial date; and,

10          3.    Objections to any demonstrative exhibits shall be  
11          submitted to the Court no later than 7 days before the first  
12          scheduled trial date.

13          d.    **Stipulation on Objections to Rebuttal Expert Reports:**

14               In order to facilitate a more efficient trial, the  
15               parties have stipulated that:

16          1.    Neither party will object to the other party's  
17          expert's rebuttal opinions or supplemental opinions given prior  
18          to the expert's deposition on the basis that such opinions  
19          should have been disclosed in the other party's initial expert  
20          witness disclosures; and,

21          2.    The stipulation in paragraph d.1. does not apply to  
22          objections to expert testimony based on any other alleged lack  
23          of compliance with Fed. R. Evid. 702.

24          Each party may call a witness designated by the other.

25          A.    No other witnesses will be permitted to testify  
26          unless:

1           (1) The party offering the witness demonstrates that  
2 the witness is for the purpose of rebutting evidence which  
3 could not be reasonably anticipated at the Pretrial Conference,  
4 or

5           (2) The witness was discovered after the Pretrial  
6 Conference and the proffering party makes the showing required  
7 in "B" below.

8           B. Upon the post-Pretrial discovery of witnesses, the  
9 attorney shall promptly inform the court and opposing parties  
10 of the existence of the unlisted witnesses so that the court  
11 may consider at trial whether the witnesses shall be permitted  
12 to testify. The evidence will not be permitted unless:

13           (1) The witnesses could not reasonably have been  
14 discovered prior to Pretrial;

15           (2) The court and opposing counsel were promptly  
16 notified upon discovery of the witnesses;

17           (3) If time permitted, counsel proffered the  
18 witnesses for deposition;

19           (4) If time did not permit, a reasonable summary of  
20 the witnesses' testimony was provided opposing counsel.

21           **XII. EXHIBITS, SCHEDULES AND SUMMARIES**

22           Plaintiff contemplates the following by way of exhibits:

23           See attachment "C".

24           Defendant contemplates the following by way of exhibits:

25           See attachment "D".

26       ////

1       The parties agreed to a stipulation regarding  
2 demonstrative exhibits.

3       a.   **Stipulation on Use of Demonstrative Evidence at**  
4           **Trial:**

5       In order to facilitate a more efficient trial, the parties  
6 have stipulated that:

7       1.   Demonstrative exhibits do not need to be listed on  
8 the list of trial exhibits;

9       2.   Any demonstrative exhibits a party plans to use at  
10 trial will be submitted to the other party by no later than 30  
11 days before the first scheduled trial date; and,

12       3.   Objections to any demonstrative exhibits shall be  
13 submitted to the Court no later than 7 days before the first  
14 scheduled trial date.

15       A.   No other exhibits will be permitted to be introduced  
16 unless:

17           (1) The party proffering the exhibit demonstrates  
18 that the exhibit is for the purpose of rebutting evidence which  
19 could not be reasonably anticipated at the Pretrial Conference,  
20 or

21           (2) The exhibit was discovered after the Pretrial  
22 Conference and the proffering party makes the showing required  
23 in paragraph "B," below.

24       B.   Upon the post-Pretrial discovery of exhibits, the  
25 attorneys shall promptly inform the court and opposing counsel  
26 of the existence of such exhibits so that the court may

1 consider at trial their admissibility. The exhibits will not  
2 be received unless the proffering party demonstrates:

3 (1) The exhibits could not reasonably have been  
4 discovered prior to Pretrial;

5 (2) The court and counsel were promptly informed of  
6 their existence;

7 (3) Counsel forwarded a copy of the exhibit(s) (if  
8 physically possible) to opposing counsel. If the exhibit(s)  
9 may not be copied, the proffering counsel must show that he has  
10 made the exhibit(s) reasonably available for inspection by  
11 opposing counsel.

12 As to each exhibit, each party is ordered to exchange  
13 copies of the exhibit not later than fourteen (14) days from  
14 the date of this Pretrial Order. Each party is then granted  
15 fourteen (14) days to file with the court and serve on opposing  
16 counsel any objections to said exhibits. In making said  
17 objections, the party is to set forth the grounds for the  
18 objection. As to each exhibit which is not objected to, it  
19 shall be marked and received into evidence and will require no  
20 further foundation. Each exhibit which is objected to will be  
21 marked for identification only.

22 In addition to electronically filing said objections, if  
23 any, the objections must be submitted by email, as an  
24 attachment in Word or WordPerfect format, to:  
25 arivas@caed.uscourts.gov.

26 ////



1 The attorney for each party is directed to appear before  
2 and present an original and one (1) copy of said exhibit to Ana  
3 Rivas, Deputy Courtroom Clerk, not later than 10:30 a.m. on the  
4 date set for trial. All exhibits shall be submitted to the  
5 court in binders. Plaintiff's exhibits shall be listed  
6 numerically. Defendant's exhibits shall be listed  
7 alphabetically. The parties shall use the standard exhibit  
8 stickers provided by the court: pink for plaintiff and blue  
9 for defendant.

10 **XIII. DISCOVERY DOCUMENTS**

11 See plaintiff's attachment "E".

12 See defendant's attachment "F".

13 **XIV. FURTHER DISCOVERY OR MOTIONS**

14 Both parties anticipate the motions in limine which the  
15 court has heretofore set. TEO also anticipates filing a  
16 motion to compel the production of documents.

17 **XV. STIPULATIONS**

18 AmeriPride and TEO have agreed to the following  
19 stipulations:

20 a. Stipulation pursuant to the court's order entered  
21 on July 8, 2011:

22 "The court will instruct the jury and/or the fact  
23 finder will find that the removed pipes leaked PCE-contaminated  
24 wastewater into the into the soil and groundwater and that this  
25 was a cause of the contamination on the Huhtamaki property.  
26 AmeriPride will be prohibited from presenting any evidence

1 which denies that AmeriPride contributed to the soil and  
2 groundwater contamination. However, the parties agree that  
3 there is a dispute about the amount of contamination caused by  
4 releases of wastewater during both VIS, Inc.'s and AmeriPride's  
5 operation of the Facility that must be resolved by the trier  
6 of fact." This stipulation as been entered as an order of the  
7 Court. (Dkt. 763). The fact to be entered pursuant to the  
8 stipulation and order is Undisputed Fact 69.

9       **b. Stipulation on Use of Deposition Testimony at**  
10       **Trial:**

11       In order to facilitate a more efficient trial, the  
12 parties have stipulated that:

13       1. Deposition testimony given in this civil action,  
14 including any civil action with which this civil action has  
15 been consolidated, may be used at trial in lieu of calling a  
16 live witness;

17       2. The parties will provide notice of their intent to  
18 call a witness by deposition no later than 30 days after the  
19 final pretrial conference;

20       3. Designation of deposition testimony will be as  
21 follows:

22       a. The party proposing to call a witness by  
23 deposition shall designate those portions of the deposition  
24 testimony within 15 days after giving notice of intent to  
25 call the witness by deposition;

1       b.    The other party shall provide counter designations  
2 of deposition testimony, along with any objections to the  
3 designated deposition testimony 15 days later;

4       c.    Any objections to the counter designated  
5 deposition testimony shall be served and filed 7 days  
6 thereafter; and,

7       d.    Written responses to any objections shall be  
8 filled 7 days thereafter;

9       4.    The designation of any party of its intent to  
10 utilize the deposition testimony of a witness shall not  
11 prohibit the any party from calling that witness to testify  
12 live at trial, provided the live testimony is not  
13 cumulative; and,

14       5.    The deposition testimony designated by the parties  
15 shall be read into the record at trial, unless the Court  
16 decides to accept the testimony as a written submission.

17       **c.    Stipulation on Use of Demonstrative Evidence at**  
18       **Trial:**

19       In order to facilitate a more efficient trial, the  
20 parties have stipulated that:

21       1.    Demonstrative exhibits do not need to be listed on  
22 the list of trial exhibits;

23       2.    Any demonstrative exhibits a party plans to use at  
24 trial will be submitted to the other party by no later than  
25 30 days before the first scheduled trial date; and,  
26

1        3.    Objections to any demonstrative exhibits shall be  
2 submitted to the Court no later than 7 days before the first  
3 scheduled trial date.

4        d.    **Stipulation on Objections to Rebuttal Expert**

5                **Reports:**

6        In order to facilitate a more efficient trial, the  
7 parties have stipulated that:

8        1.    Neither party will object to the other party's  
9 expert's rebuttal opinions or supplemental opinions given  
10 prior to the expert's deposition on the basis that such  
11 opinions should have been disclosed in the other party's  
12 initial expert witness disclosures; and,

13        2.    The stipulation in paragraph d.1. does not apply  
14 to objections to expert testimony based on any other alleged  
15 lack of compliance with Fed. R. Evid. 702.

16                        **XVI.    AMENDMENTS/DISMISSALS**

17        a.    AmeriPride agreed to withdraw its state law claims.

18        b.    TEO will dismiss its third-party complaint against  
19 Univar USA, Inc.    AmeriPride notes that TEO has not yet  
20 dismissed this complaint and that time to serve it has already  
21 passed and the defendant agrees.

22                        **XVII.    FURTHER TRIAL PREPARATION**

23        A.    Counsel are directed to Local Rule 285 regarding  
24 the contents of and the time for filing trial briefs.

25        **////**

1       B.    The parties shall file and serve Proposed Findings  
2 of Fact and Conclusions of Law not later than fifteen (15)  
3 days prior to the first date of trial.

4       C.    It is the duty of counsel to ensure that any  
5 deposition which is to be used at trial has been filed with  
6 the Clerk of the Court. Counsel are cautioned that a  
7 failure to discharge this duty may result in the court  
8 precluding use of the deposition or imposition of such other  
9 sanctions as the court deems appropriate.

10       D.    The parties are ordered to file with the court and  
11 exchange between themselves not later than one (1) week  
12 before the trial a statement designating portions of  
13 depositions intended to be offered or read into evidence  
14 (except for portions to be used only for impeachment or  
15 rebuttal).

16       E.    The parties are ordered to file with the court and  
17 exchange between themselves not later than one (1) week  
18 before trial the portions of answers to interrogatories  
19 which the respective parties intend to offer or read into  
20 evidence at the trial (except portions to be used only for  
21 impeachment or rebuttal).

22       F.    The court has extensive audiovisual equipment  
23 available. Any counsel contemplating its use shall contact  
24 the court's Telecommunications Manager, Andre Carrier, at  
25 ////

26

1 (916) 930-4223, at least two weeks in advance of trial to  
2 receive the appropriate training.

3 **XVIII. SETTLEMENT NEGOTIATIONS**

4 The parties have been engaging in settlement  
5 negotiations with Mr. Timothy Gallagher. The court will now  
6 appoint Mr. Gallagher as a special master for settlement  
7 purposes.

8 **XIX. TRIAL EXHIBITS**

9 The parties agree that no special handling of trial  
10 exhibits will be required.

11 **XX. SEPARATE TRIAL OF ISSUES**

12 Not required.

13 **XXI. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS**

14 None.

15 **XXII. ATTORNEYS' FEES**

16 None.

17 **XXIII. MISCELLANEOUS**

18 AmeriPride will put together a glossary of relevant terms  
19 and TEO will approve them prior to trial.

20 **XXIV. ESTIMATE OF TRIAL TIME/TRIAL DATE**

21 Court trial is set for January 18, 2012, at 10:30 a.m. in  
22 Courtroom No. 4. The parties represent in good faith that the  
23 trial will take approximately five to ten (5-10) days.

24 ////

25 ////



1 Counsel are to call Ana Rivas, Courtroom Deputy, at (916)  
2 930-4133, one week prior to trial to ascertain status of trial  
3 date.

4 **XXV. PARTIES' STATEMENT OF ALL NON-DISCOVERY MOTIONS**

5 **TENDERED TO THE COURT**

6 Pursuant to the Court's Scheduling Order (Dkt. 695),  
7 the parties agree that the following non discovery motions  
8 were tendered to the Court and were resolved as indicated  
9 below:

10 **a. Motion to Approve Settlement Between AmeriPride**  
11 **and Cal-Am Water Co.**

12 In a related matter, California-American Water Company  
13 v. AmeriPride Services, Inc., No. 02-1479 (the "Cal-Am  
14 Action"), on August 16, 2005, the Court granted a motion  
15 approving a settlement between Cal-Am Water Company and  
16 AmeriPride. By that settlement, AmeriPride paid Cal-Am Water  
17 Company \$2 million.

18 **b. Motion to Consolidate (Dkt. 175-4)**

19 A motion to consolidate was filed this action with  
20 Huhtamaki Foodservice, Inc v. AmeriPride Services, Inc. (the  
21 "Huhtamaki Action"). (Dkt. 175-4.) The motion was granted on  
22 November 3, 2005. (Dkt. 185.)

23 **c. Joint Motion for Good Faith Settlement (Dkt. 615)**

24 The joint motion for good faith settlement filed by: (i)  
25 AmeriPride; (ii) Mission Linen Supply ("Mission Linen") as a  
26

1 defendant in the AmeriPride Action; (iii) Chromalloy American  
2 Corporation ("Chromalloy American"), DHM Enterprises, Inc.  
3 ("DHM"), George Backovich and Bruce Pennell (the "DHM Parties")  
4 as defendants, cross claimants and cross-defendants in the  
5 AmeriPride Action; (iv) Petrolane Incorporated, UGI  
6 Corporation, AmeriGas Inc., AmeriGas Propane, Inc., AmeriGas  
7 Propane LP, AmeriGas Partners, L.P, and Texas Eastern  
8 Corporation (collectively "Petrolane"), defendants in the  
9 AmeriPride Action; and (v) Huhtamaki Foodservice Inc.  
10 ("Huhtamaki"), the plaintiff in the Huhtamaki Action is at Dkt.  
11 615. By this motion, AmeriPride and all of the defendants,  
12 except TEO, sought approval of good faith settlements. This  
13 motion was granted by the Court by its order dated July 2,  
14 2007. (Dkt. 638.) This order approved three settlements: (i)  
15 A settlement by which AmeriPride paid Huhtamaki, Inc. \$8.25  
16 million; (ii) A settlement by which Petrolane paid AmeriPride  
17 \$2.75 million; and, (ii) A settlement by which Chromalloy  
18 American paid AmeriPride \$500,000.

19 **d. TEO's Summary Judgment Motion (Dkt. 669)**

20 Styled as a motion to dismiss for lack of capacity, the  
21 Court treated this motion as a summary judgment motion by TEO.  
22 TEO's motion, AmeriPride's opposition and TEO's reply papers  
23 are at Dkt. 669 to Dkt. 676. This motion was resolved by the  
24 Court's order dated November 24, 2008 by which the Court  
25 granted TEO's motion, but allowed AmeriPride to seek  
26

1 appointment of a receiver in the Delaware Courts. (Dkt. 677.)  
2 Ultimately, the Delaware Chancery Court appointed a receiver  
3 and its decision was affirmed by the Delaware Supreme Court.  
4 (See Dkt. 690.)

5 **e. AmeriPride's Summary Judgment Motion (Dkt. 698)**

6 AmeriPride's summary judgment motion under CERCLA, TEO's  
7 Opposition and AmeriPride's reply papers are at Dkt. 698 to  
8 Dkt. 702, Dkt. 714 to Dkt. 722, and Dkt. 727 to Dkt. 727-10.  
9 This motion was resolved by the Court's Summary Adjudication  
10 Order (Dkt. 735).

11 **f. TEO's Daubert Motion (Dkt. 740)**

12 TEO's Daubert motion, AmeriPride's Opposition and TEO's  
13 reply papers are at Dkt. 740 to Dkt. 744, Dkt. 755 to Dkt.  
14 755-44, and Dkt. 762 to Dkt. 762-5. This motion was denied,  
15 subject to the Court's further determinations as to the  
16 relevance and reliability of the challenged testimony at trial.  
17 (Dkt. 765).

18 **XXVI. CLAIMS OF PRIVILEGE**

19 AmeriPride claims privilege against disclosure, of  
20 information contained in the attorneys' fee invoices produced  
21 in support of AmeriPride's claims against TEO, but the validity  
22 of the claim has not yet been determined. AmeriPride claims  
23 privilege for the individual entries in the invoices, but not  
24 the amounts paid, on the basis of the attorney-client privilege  
25 and the attorney work product doctrine. AmeriPride claims  
26

1 privilege against disclosure of information contained in  
2 written communications between AmeriPride employees and  
3 in-house counsel as well as communications between outside  
4 counsel and AmeriPride, as disclosed on AmeriPride's final  
5 privilege log, served to TEO on August 26, 2011, along with  
6 prior privilege logs referenced in AmeriPride's final privilege  
7 log. TEO has objected to some of these privilege claims, but  
8 the validity of these privilege claims has not been challenged  
9 by motion filed by TEO or determined by the Court.

10 Based on a review of AmeriPride's Appendix 1, TEO  
11 anticipates AmeriPride will attempt to call attorneys John  
12 Poulos and Bruce Telles to testify. Mr. Poulos at one time  
13 appeared for TEO as counsel of record. Mr. Telles is an  
14 attorney that represents some of TEO's potential insurers. As  
15 discussed above, before either of these attorney witnesses is  
16 allowed to testify, AmeriPride should be required to explain  
17 the significance of the matters to which each might testify,  
18 the weight the witness' testimony has in resolving these  
19 matters and the availability of other witnesses or documentary  
20 evidence by which these matters could be independently  
21 established.

22 AmeriPride has withheld documents claiming privilege based  
23 primarily on the attorney-client/work product privilege.  
24 However, these documents include environmental audits conducted  
25 by the general manager of AmeriPride's facilities. These  
26

1 audits are dated as early as 1989 and were discussed in Bernard  
2 Berry's deposition as a series of questions regarding the  
3 various types of potential pollution issues at each facility.  
4 (Berry Deposition at 160:12-15). The withheld documents also  
5 include a memorandum compiling the information from these  
6 audits. This information is crucial to this litigation because  
7 it will establish that AmeriPride was aware of the potential  
8 for environmental contamination as early as the 1980s at each  
9 of its laundry facilities. Additionally, any memorandum  
10 prepared with the information provided in these audits should  
11 not be withheld because the facts relayed are not privileged.  
12 At minimum, the court should conduct an in camera review of the  
13 documents withheld as privileged.

14 **XXVII. OBJECTIONS TO PRETRIAL ORDER**

15 Each party is granted fourteen (14) days from the  
16 effective date of this Pretrial Order [Tentative] to object to  
17 or augment same. Each party is also granted seven (7) days  
18 thereafter to respond to the other party's objections. If no  
19 objections or additions are made, the Tentative Pretrial Order  
20 will become final without further order of the court.

21 The parties are reminded that pursuant to Federal Rule of  
22 Civil Procedure 16(e), this order shall control the subsequent  
23 course of this action and shall be modified only to prevent  
24 manifest injustice.

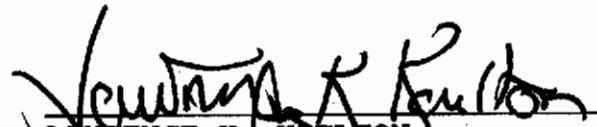
25 ////  
26

1                                    XXVI. OTHER

2            All time limits and dates that refer to the Pretrial Order  
3 refer to the date this Pretrial Order [Tentative] is filed and  
4 not the date an amended order, if any, is filed.

5            IT IS SO ORDERED.

6            DATED: October 26, 2011.

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9                                      
10                                  LAWRENCE K. KARLTON  
11                                  SENIOR JUDGE  
12                                  UNITED STATES DISTRICT COURT  
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### **Appendix 1**

*AmeriPride Services Inc. v. Valley Industrial Services, Inc.*, Case No. 00-113  
LKK/JFM

List of prospective witnesses offered by Plaintiff AmeriPride Services Inc.

**Appendix 1**

*AmeriPride Services Inc. v. Valley Industrial Services, Inc.*, Case No. 00-113 LKK/JFM

List of prospective witnesses offered by Plaintiff AmeriPride Services Inc.:

<b>Mark A. Bryant, P.E., D.WRE</b> <b>(Expert Witness)</b> Shannon & Wilson Inc. 400 N. 34th Street Seattle, WA 98103
<b>James Burlingame</b> AmeriPride Services Inc. 650 Industrial Boulevard Minneapolis, MN 55413
<b>John D. Dankoff, Jr.</b> 7584 Saint Luke Way Sacramento, CA 95823
<b>Gaynor Dawson, P.E., BCEE</b> <b>(Texas Eastern Overseas, Inc.'s</b> <b>Rule 30(b)(6) Designee)</b> 64209 East Grover West Richland, WA 99353
<b>Rogerio Delossantos</b> 12531 Rising Road Wilton, CA 95693
<b>Anne M. Farr, PH.D.</b> <b>(Expert Witness)</b> Farr Associates 6016 Princeton Reach Way Granite Bay, CA 95746
<b>Timothy Flowers</b> 543 Ward Avenue Patterson, CA 95363
<b>Anne Wooster Gates, P.E.</b> <b>(Expert Witness)</b> ENVIRON International Corporation Marketplace Tower 6001 Shellmound Street, Suite 700 Emeryville, CA 94608
<b>Russell Greaver</b> 2235 Serena Avenue Fresno, CA 93720

<b>Steven Haskell</b> Berkes Crane Robinson & Seal LLP 515 S. Figueroa Street, Suite 1500 Los Angeles, CA 90071
<b>Michael Kavanaugh, Ph.D., P.E.</b> (Expert Witness) Geosyntec Consultants 1111 Broadway, 6 <sup>th</sup> Floor Oakland, CA 94607
<b>Harvey Kreitenberg</b> 245 South Hudson Avenue Los Angeles, CA 90004
<b>Durin Linderholm</b> California Regional Water Quality Control Board, Central Valley Region 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670
<b>Joseph E. Peter</b> URS Corporation 100 South Fifth Street, Suite 1500 Minneapolis, MN 55402
<b>John Poulos</b> Pillsbury Winthrop Shaw Pittman LLP 2600 Capitol Avenue, Suite 300 Sacramento, CA 95816
<b>Robert Steven Smelosky</b> 7256 Lamer Way Sacramento, CA 95828
<b>Lee N. Smith</b> Stoel Rives LLP 500 Capital Mall, Suite 1600 Sacramento, CA 95814
<b>Robert J. Smith</b> 6780 Trudy Way Sacramento, CA 95831
<b>Catherine J. Stott</b> Burns & McDonnell 8201 Norman Center Drive, Suite 300 Bloomington, MN 55437
<b>Jesse F. Taylor</b> 902 Del Paso Boulevard, Space 140 Sacramento, CA 95815

**Bruce Telles**

The Aiwasian Law Firm  
725 S. Figueroa Street  
Los Angeles, CA 90017

**Jeffrey J. Thuma, P.G.**

Burns & McDonnell  
8201 Norman Center Drive, Suite 300  
Bloomington, MN 55437

**Jim Warner, P.G.**

**(Expert Witness)**

Environmental Resource Management  
1277 Treat Boulevard, Suite 500  
Walnut Creek, CA 94597

**Addendum 1**

*AmeriPride Service, Inc. v. Valley Industrial Services, Inc., Case No. 00-113 LKK/JFM*

**List of Prospective witnesses to be offered by TEO**

ATTACHMENT "B"

**Addendum 1***AmeriPride Service, Inc. v. Valley Industrial Services, Inc., Case No. 00-113 LKK/JFM***List of Prospective witnesses to be offered by TEO <sup>1</sup>**

Name	Address
Armstrong, Raymond	8450 Gerber Rd. Sacramento, CA 95828
Berry, B. P., Jr.	1337 Bethune Way The Villages, FL 32162-2243
Burke, Wayne	184 Par Lane Bakersfield, CA 93308
Burlingame, James	AmeriPride Services Inc. 650 Industrial Boulevard Minneapolis, MN 55413
Butcher, George	5610 N. Augusta St. Fresno, CA 93710
Dankoff, John D., Jr.	7584 Saint Luke Way Sacramento, CA 95823
Dawson, Gaynor	(Texas Eastern Overseas, Inc.'s Rule 30(b)(6) Designee) 64209 East Grover West Richland, WA 99353
Delossantos, Rogerio	12531 Rising Road Wilton, CA 95693
Flowers, Timothy	543 Ward Ave. Patterson, CA 95363
Gates, Ann Wooster Gates	(Expert Witness) ENVIRON International Corporation Marketplace Tower 6001 Shellmound Street, Suite 700 Emeryville, CA 94608
Greaver, Russell	2235 Serena Avenue Fresno, CA 93720
Helps, Sandra	702 E. Montecito St. Santa Barbara, CA 93103
Kavanaugh, Michael	(Expert Witness) Geosyntec Consultants 1111 Broadway, 6th Floor Oakland, CA 94607
Kritenberg, Harvey	(Expert Witness) 245 South Hudson Avenue

<sup>1</sup> TEO reserves the right to call any person listed on AmeriPride's witness list filed on September 19, 2011



Name	Address
	Los Angeles, CA 90004
Landon, Cass	808 Coyote Rd. Santa Barbara, CA 93108
Logan, Henry	831 State St. Apt. 2 Santa Barbara, CA 93101
Smelosky, Robert Steven	7256 Lamer Way Sacramento, CA 95828
Smith, Robert J.	6780 Trudy Way Sacramento, CA 95831
Taylor, Jesse F.	902 Del Paso Boulevard, Space 140 Sacramento, CA 95815
Thuma, Jeffrey J.	Burns & McDonnell 8201 Norman Center Drive, Suite 300 Bloomington, MN 55437
Warner, Jim	(Expert Witness) Environmental Resource Management 1277 Treat Boulevard, Suite 500 Walnut Creek, CA 94597
Wadsworth, Michael	8450 Gerber Rd. Sacramento, CA 95828
Custodian of Records for the Sacramento Environmental Management District	10590 Armstrong Avenue Mather, CA 95655
Custodian of Records for the Central Valley Regional Water Quality Control Board	1001 I Street Sacramento, CA 95814
Custodian of Records for the U.S. Environmental Protection Agency	1200 Pennsylvania Avenue, NW (2822T) Washington, DC 20460
Custodian of Records for the Sacramento County Sanitation District	10060 Goethe Road Sacramento, CA 95827

## **Appendix 2**

*AmeriPride Services Inc. v. Valley Industrial Services, Inc.*, Case No.  
00-113 LKK/JFM

List of documents and other exhibits Plaintiff AmeriPride Services Inc.  
expects to offer at trial.

**Appendix 2***AmeriPride Services Inc. v. Valley Industrial Services, Inc.*, Case No. 00-113 LKK/JFM

List of documents and other exhibits Plaintiff AmeriPride Services Inc. expects to offer at trial:

Exhibit Number	Description of document or other exhibit
1	Affidavit of Durin Linderholm
2	RWQCB's May 7, 2003 Transmittal of Adopted Resolution No. R5-2003-0057; Resolution No. R5-2003-0058; and Cleanup and Abatement Order R5-2003-0059 issued to AmeriPride Services, Inc., and Valley Industrial Services, Inc., 7620 Wilbur Way, Sacramento County and cover letter thereto
3	RWQCB's December 21, 2005 Cleanup and Abatement Order R5-2005-0721 issued to AmeriPride Services, Inc., and Valley Industrial Services, Inc., 7620 Wilbur Way, Sacramento County and cover letter thereto
4	RWQCB's September 8, 2006 Cleanup and Abatement Order R5-2006-0530 issued to AmeriPride Services, Inc., and Valley Industrial Services, Inc., 7620 Wilbur Way, Sacramento County and cover letter thereto
5	RWQCB's September 24, 2007 Cleanup and Abatement Order R5-2007-0723 issued to AmeriPride Services, Inc., and Valley Industrial Services, Inc., 7620 Wilbur Way, Sacramento County and cover letter thereto
6	RWQCB's April 30, 2009 Amended Cleanup and Abatement Order R5-2009-0702 issued to AmeriPride Services, Inc., and Valley Industrial Services, Inc., 7620 Wilbur Way, Sacramento County and cover letter thereto
7	Letter from Susan Timm of the RWQCB dated February 28, 2003 to Ms. Rojean Rada, AmeriPride Services, Inc. with the subject "Response to Technical Comments on Draft Cleanup and Abatement Order, AmeriPride Services, Inc., 7620 Wilbur Way, Sacramento County"
8	Letter from Susan Timm of the RWQCB dated July 25, 2006 to Ms. Rojean Rada, AmeriPride Services, Inc. with the subject "Remedial Investigation/Feasibility Study Report: Downgradient Ground Water (Operable Unit 3), AmeriPride Services, Inc., 7620 Wilbur Way, Sacramento County"
9	Settlement Agreement between California-American Water Company, AmeriPride Services, Inc., and Petrolane, Inc.
10	Bank statement dated September 30, 2005 showing payment made by AmeriPride to California-American Water Company for settlement in the amount of \$2,000,000.00, determined as undisputed by the Court (Dkt. 735 at 23)
11	Settlement Agreement and Mutual Release between AmeriPride Services Inc. and Huhtamaki Foodservices, Inc.
12	Bank statement dated February 28, 2007 showing payment made by AmeriPride to Huhtamaki Foodservices, Inc. for settlement in the amount of \$8,250,000.00, determined as undisputed by the Court (Dkt. 735 at 23)
13	Table summarizing consultant and other costs paid for investigation/remediation through, as submitted to the Court on January 7, 2011

14	Declaration of Joseph E. Peter in Support of AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt. 698-17 to 698-52), including: (a) Invoices reflecting consultant and other costs of \$7,331,528.25 paid for investigation/remediation through August 2010, as submitted to the Court on January 7, 2011 (Dkt. 698-18 to 698-51) and determined as undisputed (Dkt. 735 at 23); and (b) Invoices reflecting costs of \$474,729.67 paid for regulatory oversight through September 2010, as submitted to the Court on January 7, 2011 (Dkt. 698-52) and determined as undisputed by the Court (Dkt. at 23)
15	Invoices reflecting consultant and other costs of \$446,656.84 paid for investigation/remediation since August 2010
16	Invoices reflecting costs of \$16,604.52 paid for regulatory oversight since January 2011
17	Invoices reflecting costs paid for legal services rendered
18	Declaration of Anne M. Farr in Support of AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt. 698-5)
19	Notice of Errata re Declaration of Anne M. Farr in Support of AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt. 709)
20	Declaration of Catherine J. Stott in Support of AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt. 698-6)
21	Declaration of Mark A. Bryant in Support of AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt. 698-8)
22	Declaration of Jeffrey J. Thuma in Support of AmeriPride Services Inc.'s Motion for Summary Judgment (Dkt. 698-9 to 698-16)
23	December 22, 2010 Expert Report of Mark A. Bryant, P.E. (Dkt. 706-1)
24	December 28, 2010 Expert Report of Anne M. Farr, Ph.D. (Dkt. 706-2)
25	February 1, 2011 Expert Report of Jim Warner, P.G. (Dkt. 707 to 707-60)
26	Declaration of Jim Warner in Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 718 to 718-2)
27	Harvey Kreitenberg's Declaration in Support of Texas Eastern Overseas' Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 719 to 719-2)
28	Rebuttal Declaration of Anne M. Farr Ph.D. in Support of AmeriPride Services Inc.'s Reply Brief in Support of its Motion for Summary Judgment (Dkt. 727-7)
29	Rebuttal Declaration of Mark A. Bryant in Support of AmeriPride Services Inc.'s Reply Brief in Support of its Motion for Summary Judgment (Dkt. 727-8)
30	Rebuttal Declaration of Catherine J. Stott in Support of AmeriPride Services Inc.'s Reply Brief in Support of its Motion for Summary Judgment (Dkt. 727-9)
31	April 15, 2011 Rebuttal Expert Report of Mark Bryant, P.E. (Dkt. 729-1)
32	April 15, 2011 Rebuttal Expert Report of Anne M. Farr, Ph.D. (Dkt. 729-2 to 729-5)
33	April 27, 2011 Supplemental Rebuttal Expert Report of Anne M. Farr, Ph.D. (Dkt. 731)
34	April 13, 2011 Rebuttal Expert Report of Harvey Kreitenberg
35	April 14, 2011 Rebuttal Expert Report of Michael Kavanaugh, Ph.D., P.E.
36	April 15, 2011 Rebuttal Expert Report of Jim Warner, P.G.
37	April 15, 2011 Rebuttal Expert Report of Anne Gates, P.E.

38	April 7, 2006 Expert Report of Mark A. Bryant (Dkt. 221-1)
39	Declaration of Anne M. Farr Ph.D. in Support of AmeriPride Services Inc.'s Opposition to Texas Eastern Overseas, Inc.'s <i>Daubert</i> Motion to Exclude Opinion Testimony of Dr. Anne Farr (Dkt. 755-1 to 755-39)
40	Brian L. Zagon, <i>Letter to Ronald Bushner re: AmeriPride Services Inc. v. Valley Industrial Services, Inc.</i> (August 10, 2010) regarding prejudgment interest
41	Texas Eastern Overseas, Inc.'s Third-Party Complaint (Dkt. 697)
42	AmeriPride Services Inc.'s Fourth Amended Complaint (Dkt. 750)
43	Texas Eastern Overseas, Inc.'s Answer to AmeriPride Services, Inc.'s Fourth Amended Complaint (Dkt. 756)
44	McDonnell, Kimberley A., <i>Letter to Lee N. Smith re: Valley Industrial Services, Inc.</i> , January 31, 2002
45	Century Indemnity company and ACE Property and Casualty Insurance Company's Statement of Position re: Joint Motion for Judgment, Approval of Settlement and Entry of Contribution Bar (Dkt. 622)
46	AAA Engineering & Drafting Co., <i>Foundation Plan</i>
47	AAA Engineering & Drafting Co., <i>Plumbing Site Plan</i>
48	All-Service Remediation, <i>Summary of Field Notes</i> , October 19, 2005
49	American Linen Supply Company, <i>Proposed Layout</i> , February 25, 1992
50	AmeriPride Services Inc., <i>Floor Plan</i>
51	AmeriPride Services Inc., <i>Demolition Plan</i>
52	AmeriPride Services Inc., <i>Building Addition Site Plan</i>
53	AmeriPride Uniform Services, <i>Sump System</i> , October 24, 1997
54	AmeriPride Uniform Services, <i>Industrial Sewer Use Permit Application</i> , March 20, 1998
55	AmeriPride Uniform Services, <i>Hazardous Materials Disclosure Information</i> , May 28, 1998
56	AmeriPride Uniform Services, <i>Sacramento County Consolidated Contingency Plan</i> , July 30, 2001
57	AmeriPride Uniform Services, <i>Sacramento County Hazardous Materials Plan</i> , September 17, 2002
58	AmeriPride Uniform Services, <i>Compliance Report Form for Quarterly Monitoring Results, Sample Collected January 6, 2004</i> , February 9, 2004
59	AmeriPride Uniform Services, <i>Compliance Report Form for Quarterly Monitoring Results, Sample collected July 14, 2004</i> , July 23, 2004
60	AmeriPride Uniform Services, <i>Compliance Report Form for Quarterly Monitoring Results, Sample collected July 14, 2004</i> , August 5, 2004
61	Anlab Analytical Laboratory, <i>Valley Industries Grab Sampling Results for July 11, 1995</i> , January 30, 1995
62	ASTM E1739-95 (reapproved 2010), <i>Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites</i>
63	ATSDR, <i>Toxicological Profile for Tetrachloroethylene</i> , September 1997
64	BSK Analytical Laboratories, <i>Wastewater Sampling Results for November 5, 1990</i> , November 26, 1990

65	BSK Analytical Laboratories, <i>Wastewater Sampling Results for December 2, 1991, December 19, 1991</i>
66	BSK Analytical Laboratories, <i>Results for Wilbur Way Sampling, May 3, 1998</i>
67	BSK Analytical Laboratories, <i>Results for Wilbur Way Sampling, September 9, 2000</i>
68	BSK Analytical Laboratories, <i>Analytical Results for Sampling at Wilbur Way # 2 Conducted on September 25, 2000, October 19, 2000</i>
69	Burns & McDonnell Engineering Company, Inc., <i>Injury and Illness Prevention Plan &amp; Site Health and Safety Plan, October 2009</i>
70	Burns & McDonnell Engineering Company, Inc., <i>2009 Annual Groundwater Monitoring Report, January 29, 2010</i>
71	Burns & McDonnell Engineering Company, Inc., <i>2009 Annual Remediation Monitoring Report, January 29, 2010</i>
72	Burns & McDonnell Engineering Company, Inc., <i>Bench Scale Test Report, March 1, 2010</i>
73	Burns & McDonnell Engineering Company, Inc., <i>2010 Remedial Action Plan/Remedial Design: Phase II for Operable Unit 3, April 30, 2010</i>
74	Burns & McDonnell Engineering Company, Inc., <i>First Quarter 2010 Remediation Monitoring Report, April 30, 2010</i>
75	Burns & McDonnell Engineering Company, Inc., <i>First Quarter 2010 Quarterly Groundwater Monitoring Report, April 30, 2010</i>
76	Burns & McDonnell Engineering Company, Inc., <i>Toxicity Identification Evaluation Study Plan, May 7, 2010</i>
77	Burns & McDonnell Engineering Company, Inc., <i>Quarterly Groundwater monitoring Report 2<sup>nd</sup> Quarter 2010, July 2010</i>
78	Burns & McDonnell Engineering Company, Inc., <i>Potassium Permanganate Injection Pilot Test Work Plan, August 2010</i>
79	Burns & McDonnell Engineering Company, Inc., <i>Quarterly Groundwater Monitoring Report 3<sup>rd</sup> Quarter 2010, October 2010</i>
80	Burns & McDonnell Engineering Company, Inc., <i>Wastewater Discharge Permit Renewal Application, November 12, 2010</i>
81	Burns & McDonnell Engineering Company, Inc., <i>Draft AmeriPride Plant Wastewater Effluent Sample Results – Outfall 01, November 18, 2010</i>
82	Burns & McDonnell Engineering Company, Inc., <i>Table 3: Groundwater Quality Parameters (200-2010: D.O., ORP, Temp, pH, Sp. Cond)</i>
83	Burns & McDonnell Engineering Company, Inc., <i>Table 2: Groundwater Analytical Results (2000-2010)</i>
84	Burns & McDonnell Engineering Company, Inc., <i>Draft Summary of Soil Analytical Data</i>
85	Burns & McDonnell Engineering Company, Inc., <i>Draft Summary of Soil Gas Sampling Results at Individual SVE Points</i>
86	Burns & McDonnell Engineering Company, Inc., <i>Draft Summary of Off-Site Soil Gas Sampling Results</i>
87	Burns & McDonnell Engineering Company, Inc., <i>Draft Summary of Soil Gas Sampling Results</i>



88	Burns & McDonnell Engineering Company, Inc., <i>2010 Annual Groundwater Monitoring Report</i> , February 1, 2011
89	Burns & McDonnell Engineering Company, Inc., <i>2010 Annual Remediation Monitoring Report</i> , February 1, 2011
90	California Regional Water Quality Control Board, Central Valley Region, <i>Executive Officer's Report</i> , December 3, 2004
91	California Regional Water Quality Control Board, Central Valley Region, <i>Notice of Public Hearing</i> , March 23, 2007
92	California Regional Water Quality Control Board, Central Valley Region, <i>Public Notice of Public Comment Period and Public Meeting for the Draft Remedial Action Work Plan/Remedial Design: OU3</i> , April 3, 2007
93	California Regional Water Quality Control Board, Central Valley Region, <i>Minutes of the 486th Regular Meeting</i> , June 21/22, 2007
94	California Regional Water Quality Control Board, Central Valley Region, <i>Monitoring and Reporting Program No. R5-2007-0827</i> , November 5, 2007
95	California Regional Water Quality Control Board, Central Valley Region, <i>Comments on Huhtamaki Well Abandonment Report</i> , April 4, 2008
96	California State Water Resources Control Board, <i>Resolution No. 92-49 (As Amended on April 21, 1994 and October 2, 1996): Policies and procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304</i>
97	Cline, Zerkle & Agee Engineers & Architects, <i>Foundation &amp; Framing Plan for Laundry Building for Valley Industrial Laundry, Sacramento Co, California</i> , April 1, 1965
98	Cline, Zerkle & Agee Engineers & Architects, <i>Laundry Building for Valley Industrial Laundry, Sacramento Co, California: Foundation &amp; Framing Plan</i> , April 1, 1965
99	Cline, Zerkle & Agee Engineers & Architects, <i>Laundry Building for Valley Industrial Laundry, Sacramento Co, California: Plumbing Plan</i> , April 1, 1965
100	Correspondence to and from regulators regarding AmeriPride Services, Inc., as reviewed by Mark A. Bryant
101	County of Sacramento, <i>Wastewater Sampling Results for Valley Laundry Grab Sampling on May 13, 1992</i> , July 2 1992
102	County of Sacramento, Water Quality Division, Industrial Waste Section, <i>Valley Laundry Sampling Results for August 7, 1992</i>
103	County of Sacramento, Water Quality Division, Industrial Waste Section, <i>Site Inspection Report</i> , August 7, 1992
104	DelSarto, Glen, <i>Email to SWRCB re: Transmittal of AmeriPride Sewer Sampling Data</i> , November 4, 2002
105	Delta Environmental Consultants, Inc., <i>Hand Auger Soil Sampling Results and Work Plan for Two Soil Borings</i> , April 14, 1997
106	Delta Environmental Consultants, Inc., <i>Fax Transmittal to Sacramento County Transmitting Sparger Technology Analytical Results for 4/07 Soil Sampling</i> , April 24, 1997
107	Delta Environmental Consultants, Inc., <i>Revised Work Plan for Soil Boring/Monitoring Well Installation</i> , June 24, 1997
108	Delta Environmental Consultants, Inc., <i>Soil Sampling Results</i> , July 8, 1997

109	Delta Environmental Consultants, Inc., <i>Groundwater Monitoring Well Installation Report</i> , September 12, 1997
110	Delta Environmental Consultants, Inc., <i>Phase I Environmental Assessment</i> , January 9, 1998
111	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report, First Quarter 1998</i> , April 23, 1998
112	Delta Environmental Consultants, Inc., <i>Work Plan for Monitoring Well Installation and Drainage Swell Sampling</i> , April 30, 1998
113	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report, Second Quarter 1998</i> , August 31, 1998
114	Delta Environmental Consultants, Inc., <i>Additional Hydrogeological Assessment Results and Third Quarter 1998 Groundwater Monitoring Results Report</i> , February 10, 1999
115	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Fourth Quarter 1998</i> , March 24, 1999
116	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – First Quarter 1999</i> , May 24, 1999
117	Delta Environmental Consultants, Inc., <i>Phased Approach Workplan</i> , June 7, 1999
118	Delta Environmental Consultants, Inc., <i>Location Map - Geo-Sorber Modules</i> , August 9, 1999
119	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Second Quarter 1999</i> , September 21, 1999
120	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Third Quarter 1999</i> , November 19, 1999
121	Delta Environmental Consultants, Inc., <i>Results of Gore-Sorber Survey and Addendum to Phased Approach Work Plan</i> , November 29, 1999
122	Delta Environmental Consultants, Inc., <i>Clarification to SCEMD Work Plan Approval Letter Dated December 3, 1999</i> , January 10, 2000
123	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Fourth Quarter 1999</i> , April 11, 2000
124	Delta Environmental Consultants, Inc., <i>Revised Gore-Sorber Screening Survey Maps</i> , April 14, 2000
125	Delta Environmental Consultants, Inc., <i>Phase Approach Work Plan – Addendum III</i> , April 14, 2000
126	Delta Environmental Consultants, Inc., <i>Site Map</i> , April 14, 2000, entered as Exhibit 3 to the October 24, 2005 Deposition of Robert J. Smith
127	Delta Environmental Consultants, Inc., <i>Phased Approach Work Plan – Addendum II</i> , June 12, 2000
128	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Second Quarter 2000</i> , October 17, 2000
129	Delta Environmental Consultants, Inc., <i>Phased Approach Work Plan – Addendum IV</i> , February 19, 2001
130	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Second Quarter 2001</i> , August 3, 2001
131	Delta Environmental Consultants, Inc., <i>Summary of Soil Management Activities</i> , September 12, 2001

132	Delta Environmental Consultants, Inc., <i>Site Investigation Report</i> , January 24, 2002
133	Delta Environmental Consultants, Inc., <i>Work Plan for Additional Monitoring Wells</i> , February 8, 2002
134	Delta Environmental Consultants, Inc., <i>Amended Work Plan for Additional Monitoring Wells</i> , March 6, 2002
135	Delta Environmental Consultants, Inc., <i>Project Status Report</i> , April 3, 2002
136	Delta Environmental Consultants, Inc., <i>Investigation on Zimmer Property</i> , April 10, 2002
137	Delta Environmental Consultants, Inc., <i>Investigation on Zimmer Property</i> , April 25, 2002
138	Delta Environmental Consultants, Inc., <i>Work Plan for Investigation on Zimmer Property</i> , May 24, 2002
139	Delta Environmental Consultants, Inc., <i>Draft Remedial Investigation/Feasibility Study Report</i> , May 31, 2002
140	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Second Quarter 2002</i> , August 16, 2002
141	Delta Environmental Consultants, Inc., <i>Reply to Comments on Remediation Investigation/Feasibility Report</i> , August 28, 2002
142	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Third Quarter 2002</i> , November 22, 2002
143	Delta Environmental Consultants, <i>Draft Remedial Action Work Plan: Soil Vapor Extraction System</i> , September 26, 2002
144	Delta Environmental Consultants, Inc., <i>Remediation Action Work Plan for Operable Unit 1: Soil Vapor Extraction System</i> , February 27, 2003
145	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring Report – Fourth Quarter 2002</i> , April 14, 2003
146	Delta Environmental Consultants, Inc., <i>Letter to RWQCB re: Draft CAO Comments</i> , April 16, 2003
147	Delta Environmental Consultants, Inc., <i>Remedial Characterization/Feasibility Study Report: Groundwater</i> , June 20, 2003
148	Delta Environmental Consultants, Inc., <i>Revised Work Plan for Data Gap Investigation</i> , July 16, 2003
149	Delta Environmental Consultants, Inc., <i>Zimmer Investigation Analytical Results</i> , August 4, 2003
150	Delta Environmental Consultants, Inc., <i>Revised Work Plan for Data Gap Investigation</i> , October 13, 2003
151	Delta Environmental Consultants, Inc., <i>Groundwater Remedial Action Plan Pilot Testing Work Plan</i> , November 17, 2003
152	Delta Environmental Consultants, Inc., <i>Baseline Health Risk Assessment</i> , January 30, 2004
153	Delta Environmental Consultants, Inc., <i>Compliance Source Test Report: Soil Vapor Extraction System</i> , February 5, 2004
154	Delta Environmental Consultants, Inc., <i>Compliance Source Test Report : Soil Vapor Extraction System, First Quarter 2004</i> , April 29, 2004



155	Delta Environmental Consultants, Inc., <i>Soil Remediation Monitoring and Reporting Program: Soil Vapor Extraction System, First Quarter 2004</i> , April 29, 2004
156	Delta Environmental Consultants, Inc., <i>Compliance Source Test Report: Soil Vapor Extraction System, Second Quarter 2004</i> , July 29 2004
157	Delta Environmental Consultants, Inc., <i>Soil Gas Sampling Work Plan</i> , August 13, 2004
158	Delta Environmental Consultants, Inc., <i>Remedial Action Work Plan for Operable Unit 2, Revision 1: Source Area Groundwater Extraction System</i> , August 16, 2004
159	Delta Environmental Consultants, Inc., <i>Remedial Investigation/Feasibility Study Report: Downgradient Groundwater</i> , October 15, 2004
160	Delta Environmental Consultants, Inc., <i>Supplemental Baseline Health Risk Assessment Report</i> , October 27, 2004
161	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring: Third Quarter 2004</i> , October 27, 2004
162	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring: Fourth Quarter 2004</i> , January 24, 2005
163	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring, Fourth Quarter 2004</i> , January 31, 2005
164	Delta Environmental Consultants, Inc., <i>Soil Remediation Monitoring and Reporting Program: Soil Vapor Extraction System</i> , April 29, 2005
165	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring: First Quarter 2005</i> , April 29, 2005
166	Delta Environmental Consultants, Inc., <i>Compliance Source Test Report: Soil Vapor Extraction System, First Quarter 2005</i> , April 29, 2005
167	Delta Environmental Consultants, Inc., <i>Wastewater Discharge Permit Applications</i> , May 4, 2005
168	Delta Environmental Consultants, Inc., <i>Compliance Source Test Report: Soil Vapor Extraction System, Second quarter 2005</i> , July 29, 2005
169	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring: Third Quarter 2005</i> , October 31, 2005
170	Delta Environmental Consultants, Inc., <i>Compliance Source Test Report: Soil Vapor Extraction System, Third Quarter 2005</i> , October 31, 2005
171	Delta Environmental Consultants, Inc., <i>Interim Corrective Action Plan (Revised)</i> , November 14, 2005
172	Delta Environmental Consultants, Inc., <i>Remediation Monitoring and Reporting Program: Groundwater Extraction and Treatment System</i> , December 13, 2005
173	Delta Environmental Consultants, Inc., <i>Proposed Water Supply Well Replace Work Plan</i> , December 15, 2005
174	Delta Environmental Consultants, <i>Remedial Investigation/Feasibility Study Report: Downgradient Groundwater (Operable Unit 3)</i> , January 19, 2006
175	Delta Environmental Consultants, Inc., <i>Quarterly Groundwater Monitoring: Fourth Quarter 2005</i> , January 31, 2006
176	Delta Environmental Consultants, Inc., <i>Compliance Source Test: Soil Vapor Extraction System, Fourth Quarter 2005</i> , January 31, 2006
177	Delta Environmental Consultants, Inc., <i>Soil Remediation Monitoring and Reporting Program: Soil Vapor Extraction System, Fourth Quarter 2005</i> , January 31, 2006

178	Delta Environmental Consultants, <i>Final Water Supply Well Replacement Work Plan</i> , February 15, 2006
179	Delta Environmental Consultants, Inc., <i>Letter from J. Thuma to R. Rada concerning invoicing summarn and status report</i> , February 23, 2006
180	Delta Environmental Consultants, Inc., <i>Remedial Investigation/Feasibility Study Report: Downgradient Groundwater (Operable Unit 3)</i> , May 19, 2006
181	Delta Environmental Consultants, <i>Off-Site Soil Gas Sampling</i> , June 30, 2006
182	Delta Environmental Consultants, Inc., <i>Operable Unit 3: Well Installation and Aquifer Test Work Plan</i> , August 18, 2006
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198	Department of the Air Force, <i>Accreditation of the Remedial Action Cost Engineering Requirements (RACER)</i> , July 11, 2001
199	Diagram, entered as Exhibit 1 to the October 11, 2005 Deposition of Rogerio Delossantos
200	Delta Environmental Consultants, Inc., <i>Site Map</i> , May 20, 2002, entered as Exhibit 2 to the October 11, 2005 Deposition of Rogerio Delossantos
201	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on January 25, 1993</i> , February 10, 1993
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203	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on July 13, 1993, July 30, 1993</i>
204	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on October 5, 1993, October 19, 1993</i>
205	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on January 12, 1994, January 28, 1994</i>
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207	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on July 19, 1994, July 29, 1994</i>
208	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on October 19, 1994, October 21, 1994</i>
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210	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on April 3, 1996, April 22, 1996</i>
211	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on July 16, 1996, August 5, 1996</i>
212	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on October 8, 1996, October 11, 1996</i>
213	FGL Environmental, <i>Wastewater Sampling Results for Valley Industrial Services Effluent Grab on January 7, 1997, January 16, 1997</i>
214	FGL Environmental, <i>Wastewater Sampling Results for AmeriPride Effluent Grab on April 7, 1997, May 6, 1997</i>
215	FGL Environmental, <i>Wastewater Sampling Results for AmeriPride Effluent Grab on July 1997, July 28, 1997</i>
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237	Hageman-Schank, Inc., <i>Removal of Two Underground Fuel Storage Tanks, June 5, 1986</i>
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241	JR Associates, <i>Geophysical Investigation at the AmeriPride Site, March 28, 2006</i>
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243	MBT Environmental Laboratories, <i>Wastewater Sampling Results Collected by Sacramento County Regional Sanitation District for Valley Industrial Services on November 3, 1994, December 1, 1994</i>
244	MBT Environmental Laboratories, <i>3<sup>rd</sup> Sump Sampling Results for Valley Industrial Services on January 17, 1995, January 30, 1995</i>
245	MBT Environmental Laboratories, <i>Valley Industrial Services Sump 5' Sampling Results for August 17, 1995, August 30, 1995</i>
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263	Valley Industrial Services, <i>Industrial Sewer Use Permit Application</i> , December 11, 1984
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290	Los Angeles RWQCB & DTSC, <i>Advisory – Active Soil Gas Investigations</i> (January 13, 2003)
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292	Carl A. Mendoza, et al., <i>Transport of trichloroethylene vapours in the unsaturated zone: Numerical analysis of a field experiment</i> , Proceedings: Conference on Subsurface Contamination by Immiscible Fluids 221-227 (1992)
293	Carl A. Mendoza & Emil O. Frind, <i>Advective-Dispersive Transport of Dense Organic Vapors in the Unsaturated Zone 1. Model Development</i> , Water Resources Research, Vol. 26, No. 3: 379-387, (March 1990)
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297	James F. Pankow & John A. Cherry, <i>Dense Chlorinated Solvents and other DNAPLs in Groundwater</i> (1996)
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300	Rene P. Schwarzenbach & John Westall, <i>Transport of Nonpolar Organic Compounds from Surface Water to Groundwater. Laboratory Sorption Studies</i> , Environmental Science & Technology, Vol 15, No. 11 (November 1981)
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310	US EPA, Soil Screening Guidance: User's Guide (July 1996)
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312	US EPA, Soil Screening Guidance: Technical Background Document, EPA/540/R95/128 (May 1996)
313	US EPA, <i>Soil Sampling and Analysis for Volatile Organic Compounds</i> , Ground-Water Issue (February 1991)
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316	US EPA, User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings (2004)
317	US EPA Region 9 Technical Guidelines for Accurately Determining Volatile Organic Compound (VOC) Concentrations in Soil and Solid Matrices, R9QA/05.2 5, 9 (December 2005)

318	John L. Wilson and Stephen H. Conrad, <i>Is Physical Displacement of Residual Hydrocarbons a Realistic Possibility in Aquifer Restoration?</i> , Proceedings of the NWWA/API Conference on Petroleum Hydrocarbons and Organic chemicals in Groundwater, 274-298 (1984)
319	Worley Parsons Komex, <i>Video of Sewer Inspection</i> , February 11, 2006

**Addendum 2**

*AmeriPride Service, Inc. v. Valley Industrial Services, Inc., Case No. 00-113 LKK/JFM*

**List of documents and other exhibits TEO expects to offer at trial**

ATTACHMENT "D"



**Addendum 2**

*AmeriPride Service, Inc. v. Valley Industrial Services, Inc., Case No. 00-113 LKK/JFM*

List of documents and other exhibits TEO expects to offer at trial<sup>1</sup>

Exhibit	Description
A	Third Amended Complaint
B	James Burlingame Phone Logs, 31 March 1997 and 2 April 1997
C	Letter Re: Ameripride Company Wscs Discharge Request, 10 August 2010
D	"ASTM and the National Clay Pipe Institute 100 Years of Teamwork and Achievement." Standardization News, Volume 32, No. 8. August.
E	California Department of Transportation (DOT). 2009. Highway Design Manual. November 2. Pp. 850-17
F	Delta Environmental Consultants (Delta). 1991. Letter to Sacramento County DEH, Phased Work Approach Plan.
G	Fair, G.M., J.C. Geyer, and J.C. Morris. 1956. "Quantities of Water and Waste Water." Water Supply and Waste-Water Disposal. John Wiley and Sons, Inc., New York. 1956. Pp. 134-135.
H	Freeman, K. and S. Harader. 1992. Field Notes Regarding an Inspection of Valley Industrial. August 7.
I	Harris, R.J. and J. Tasello. "Sewer Leak Detection — Electro-Scan Adds a New Dimension, Case Study: City of Redding, California". No date.
J	Ingram, William T. "Sanitary Engineering." Standard Handbook for Civil Engineers. Ed. F.S. Merritt. McGraw-Hill Book Company, New York. 1968. Pp. 22-1 et seq.
K	Makar, Jon and Nathalie Chagnon. 1999. "Inspecting Systems for Leaks, Pits and Corrosion." Journal of American Water Works Association, Volume 91, No. 7. July.
L	Sacramento Regional County Sanitation District (SRCSD). 1981-2010. Sewer Use Billing Records (August 1981 — April 2010).

<sup>1</sup> TEO reserves the right to use any and all documents previously listed in AmeriPride's exhibit list filed on September 19, 2011 as docket number 771-2.

Exhibit	Description
M	USEPA. 2004. User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings. Office of Emergency and Remedial Response. February. <a href="http://www.epa.gov/oswer/riskassessment/airmodel/pdf/2004_0222_3phase_users_guide.pdf">http://www.epa.gov/oswer/riskassessment/airmodel/pdf/2004_0222_3phase_users_guide.pdf</a> .
N	Burns & McDonnell Engineering Company, Inc., 2010. 2010 Remedial Action Plan/Remedial Design: Phase II for Operable Unit 3, AmeriPride Service, Inc., 7620 Wilbur Way, Sacramento, California, Local Remediation Program Site Number C207. 30 April.
O	California Department of Public Health, located at <a href="http://www.cdph.ca.gov/certlic/drinkingwater/pages/chemicalcontaminants.aspx">http://www.cdph.ca.gov/certlic/drinkingwater/pages/chemicalcontaminants.aspx</a>
P	California Regional Water Quality Control Board, Central Valley Region, 2009. Amended Cleanup and Abatement Order No. R5-2009-0702 for AmeriPride Service, Inc. and Valley Industrial Services, Inc., 7620 Wilbur Way, Sacramento, Sacramento County. April 30.
Q	California Regional Water Quality Control Board, San Francisco Bay Region, 2007. Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater Interim Final. November.
R	Delta, 1998. Phase I Environmental Assessment, AmeriPride Uniform Services, 7620 Wilbur Way, Sacramento, California.
S	Linn, Bill, 1997. Dry-cleaning: History, Processes and Practices, Dry-cleaning Solvent Cleanup Program, Florida Department of Environmental Protection. May.
T	Monahan, Michael A, Richard J. Denney, Jr., and Donna R. Black, 1993. California Environmental Law Handbook, Seventh Edition. March.
U	Sullivan, Thomas F.P., 1997. Environmental Law Handbook. Fourteenth Edition.
V	U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, 1997. Toxicological Profile for Tetrachloroethylene. September.
W	U.S. Environmental Protection Agency, Office of Compliance, 1995. EPA Office of Compliance Sector Notebook Project, Profile of the Dry Cleaning Industry. September.
X	Barker, J.F., G.C. Patrick, and D. Major. 1987. <i>Natural Attenuation of Aromatic Hydrocarbons in a Shallow Sand Aquifer</i> , Groundwater Monitoring and Remediation: 7(1): 64-71.

Exhibit	Description
Y	Burlingame, James. 1986. <i>Letter Re: Unused Underground Storage Tanks</i> . 17 July 1986.
Z	Burns & McDonnell. 2010a. <i>First Quarter 2010 Quarterly Groundwater Monitoring Report</i> . 30 April 2010.
2A	Cogley and Wechsler. 1979. <i>Draft Final Report: Occurrence and Treatability of Priority Pollutants in Industrial Laundry Wastewaters</i> . Industrial Environmental Research Laboratory, Office of Research and Development, USEPA, Cincinnati, Ohio. 7 January 1979.
2B	Davis; Andy and Olsen, Roger L. 1990. <i>Predicting the Fate and Transport of Organic Compounds in Groundwater, Part 2</i> : HMC, p. 18-37. July/August 1990.
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2D	Delta. 2002a. <i>Site Investigation Report</i> . 24 January 2002.
2E	Delta. 2002b. <i>Remedial Investigation/Feasibility Study Report</i> . 31 May 2002.
2F	Delta. 2004a. <i>Draft Remedial Investigation/Feasibility Study Report: Downgradient Ground Water</i> . 15 October 2004.
2G	Delta. 2004b. <i>Supplemental Baseline Health Risk Assessment Report</i> . 27 October 2004.
2H	Delta. 2006. <i>Remedial Investigation/Feasibility Study Report: Downgradient Groundwater (OU3)</i> . 19 May 2006.
2I	Delta. 2007. <i>Technical Disposal Alternatives Report: Operable Unit 3 Downgradient Ground Water Extraction System</i> . 2 January 2007.
2J	Delta. 2008. <i>Remedial Action Plan/Remedial Design: Phase II for Operable Unit 3</i> . 31 December 2008.
2K	Department of Toxic Substances Control (DTSC). 1994. <i>Letter Re: Acknowledgement of Operation as a Commercial Laundry</i> . 20 December 1994.
2L	Fetter, C.W. 1988. <i>Applied Hydrogeology</i> : Merrill Publishing, Columbus, OH, 592 pp.
2M	Freeze, Alan R. and Cherry, John A. 1979. <i>Groundwater</i> . Prentice Hall. 604 pp.
2N	Hageman-Schank. 1986. <i>Letter to Valley Industrial Services Re: Removal of Two Underground Fuel Storage Tanks</i> . 5 June 1986.



Exhibit	Description
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2P	Noonan, D.C. and J.T. Curtis. 1990. <i>Groundwater Remediation and Petroleum: A guide for Underground Storage Tanks</i> , Lewis Pub., Chelsea, MI, 142 pp.
2Q	Olsen, Roger L. and Davis, Andy. 1990. <i>Predicting the Fate and Transport of Organic Compounds in Groundwater, Part 1</i> : HMC, p. 39-64. May/June 1990.
2R	Rifai, H., R. C. Borden, J. T. Wilson, and C. H. Ward. 1995. <i>Intrinsic Bioattenuation for Subsurface Restoration, Intrinsic Bioremediation</i> , Battelle Press, Columbus, OH, pp. 1-30, 1995.
2S	RWQCB. 1992. (Izzo, V. J.) <i>Dry Cleaners - A Major Source of PCE in Ground Water</i> . 27 March 1992.
2T	SCEMD. 1986. <i>Consolidated Application for Authority to Remove Underground Storage Tanks</i> . 28 May 1986.
2U	SCEMD. 1993. <i>Compliance Inspection Report</i> . 6 December 1993.
2V	SRCSD. 1984. <i>Industrial Sewer Use Permit Application</i> . 4 December 1984.
2W	SRCSD. 1986. <i>Industrial Sewer Use Permit Application</i> . 25 August 1986.
2X	SRCSD. 1993. <i>Laboratory Data</i> .
2Y	SRCSD. 1995. <i>Industrial Sewer Use Permit Application</i> . 28 April 1995.
2Z	SRCSD. 2001. <i>Inspection Report Permit No. ILNOO5</i> . 18 October 2001.
3A	SRCSD. 2003. <i>Industrial Sewer Use Permit Application</i> . 18 July 2003.
3B	SRCSD. 2005. <i>Industrial Sewer Use Permit Application</i> . 20 April 2005.
3C	SCRSD. 2010. <i>Analytical Table for Ameripride Wastewater Discharge Samples (1988 to April 2010)</i> .
3D	Suflita, J.M.. 1989. <i>Microbial Ecology and Pollutant Biodegradation in Subsurface Ecosystems, Seminar Publication: Transport and Fate of Contaminants in the Subsurface</i> . EPA/625/4-89/019. September.
3E	Testa, S.M. and D.L. Winegardner. 1991. <i>Restoration of Petroleum-Contaminated Aquifers</i> , Lewis Pub., Boca Raton, FL, 269 pp.

Exhibit	Description
3F	United States District Court. 2000. <i>Third Amended Complaint, Ameripride Services, Inc. v. Valley Industrial Services, Inc.</i> 13 December 2000.
3G	USEPA. 1988. <i>Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA</i> ; EPA/540/G-89/004, OSWER 9355.3-01. October 1988.
3H	USEPA. 1989. <i>Results of the Evaluation of Groundwater Impacts of Sewer Exfiltration</i> . February 1989.
3I	USEPA 1991. <i>Dense Nonaqueous Phase Liquids</i> ; EPA/540/4-91-002 (Scott Hulling and James Weaver).
3J	USEPA 1992a. <i>Estimating Potential for Occurrence of DNAPL at Superfund Sites</i> ; 9355.4-07FS.
3K	USEPA. 1992b. <i>CERCLA/Superfund Orientation Manual</i> ; EPA/542/R-92/005. October 1992.
3L	USEPA 1993. <i>DNAPL Site Evaluation</i> ; EPA/600/R-93/022 (Robert Cohen and James Mercer).
3M	USEPA. 1994. <i>National Oil and Hazardous Substances Pollution Contingency Plan</i> . 40 CFR Part 300. 15 September 1994.
3N	USEPA. 1998. <i>Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water</i> . EPA/600/R-98/128. September 1998.
3O	USEPA. 2000a. <i>Technical Development Document for the Final Action Regarding Pretreatment Standards for the Industrial Laundries Point Source Category</i> . March 2000.
3P	USEPA. 2000b. <i>Exfiltration in Sewer Systems</i> (Amick, Robert S. and Burgess, Edward H.). December 2000.
3Q	USEPA Region 9. 2002. <i>Preliminary Remediation Goals (PRGs) InterCalc Tables: Phys-Chem Data</i> . <a href="http://www.epa.gov/region09/waste/sfund/prg/index.htm">http://www.epa.gov/region09/waste/sfund/prg/index.htm</a> . 1 October 2002. Accessed 14 January 2005.
3R	USEPA, Solid Waste and Emergency Response. 2004. <i>How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites: A Guide for Corrective Action Plan Reviewers</i> , Chapter IX: Monitored Natural Attenuation. EPA 510-R-04-002, <a href="http://www.epa.gov/oust/pubs/tums.htm">www.epa.gov/oust/pubs/tums.htm</a> .

Exhibit	Description
3S	USEPA Regions 3, 6, and 9. 2010. <i>Regional Screening Level (RSL) Chemical-specific Parameters Supporting Table May 2010</i> . <a href="http://www.epa.gov/region9/superfund/prg/params_sl_table_run_MAY2010.xls">http://www.epa.gov/region9/superfund/prg/params_sl_table_run_MAY2010.xls</a> . Accessed 31 August 2010.
3T	Vogel, T.M., C.S. Criddle and P.L. McCarty. 1987. "Transformations of Halogenated Aliphatic Compounds," <i>Environ. Sci. Technol.</i> 21 (8), 722-736.
3U	Rebuttal Report of Anne Gates. <sup>2</sup>
3V	May 4, 2005, AmeriPride Wastewater Discharge Permit Application.
3W	AmeriPride Line and Apparel Services Laundering Process Flow Schematic.
3X	Photographs Taken at Inspection of AmeriPride Site By Defendant.
3Y	AmeriPride Phase Approach Work Plan Dated June 7, 1999.
3Z	Photographs of the AmeriPride Site, Attached as Exhibit 68-75 to Deposition of Anne Gates.
4A	DNAPL Site Evaluation by Robert M. Cohen and James W. Mercer (February 1983).
4B	Study of Potential for Groundwater Contamination From Past Drycleaner Operations in Santa Clara County, By Timothy K.G. Mohr.
4C	Geophysical Investigation at the AmeriPride Site, By J.R. Associates (March 28, 2006).
4D	Behavior Assessment Model for Trace Organics in Soil: I, <i>J. Environ. Qual.</i> Vol. 12, No. 4, 1983.
4E	Behavior Assessment Model for Trace Organics in Soil: II, <i>J. Environ. Qual.</i> Vol. 13, No. 4, 1984.
4F	Behavior Assessment Model for Trace Organics in Soil: IV, <i>J. Environ. Qual.</i> Vol. 13, No. 4, 1984.
4G	Behavior Assessment Model for Trace Organics in Soil; III, <i>J. Environ. Qual.</i> Vol. 13, No. 4, 1984.
4H	Limited Validation of Jury Infinite Source and Jury Finite Source Models (Eq, 1995).

<sup>2</sup> TEO objects to the introduction of any expert report. However, to the extent that any are admitted all should be.



Exhibit	Description
4I	Letter to Petrolane, dated February 22, 1983.
4J	Letter from Henry W. Logan to Petrolane, dated February 24, 1983
4K	Purchase Agreement, Dated March 1983 between Mission Industries and Valley Industrial Services.
4L	Letter from Mission Industries to Petrolane, dated February 24, 1983.
4M	Letter from Petrolane to Mission Industries, dated June 9, 1983.
4N	Inter-branch correspondence of American Linens Supply Company, dated November 29, 1983 for J. Norman Hove.
4O	June 8, 1983 check made payable to Petrolane, Inc. for \$17 million.
4P	May, 1994 Hazardous Materials Disclosure Form of AmeriPride.
4Q	Delta letter to Sacramento County regarding August Soil Sample results and work plan, dated April 14, 1997.
4R	Notice to Comply directed to AmeriPride from County of Sacramento, dated March 28, 2000.
4S	Facility Inspection Notes of County of Sacramento Environmental Management Department, Hazardous Materials Division, dated March 28, 2000.
4T	Hazardous Waste Manifests generated by AmeriPride.
4U	AmeriPride Consolidated Contingency Plan, dated May 22, 2000.
4V	Handwritten closing notes of J. P. Barry, Jr. for purchase of sites.
4W	Notice to Comply issued by County of Sacramento, Environmental Management Department, on October 30, 2003 to AmeriPride.
4X	Hazardous Materials Plan of AmeriPride, dated August 8, 2003.
4Y	Notice to Comply, dated July 8, 2004 by County of Sacramento, Environmental Management Department.
4Z	Letter of Frank Woods, dated July 11, 1995 to CALEPA.
5A	Notice to Comply to the Huhtamaki/ Chinnet Company, dated February 20, 1996 from County of Sacramento, Environmental Management Department.

Exhibit	Description
5B	Estimating Potential for Currents of DNAPL at Superfund Sites, United States Environmental Protection Agency, January 1992.
5C	2010 Annual Groundwater Monitoring Report, AmeriPride Services, Inc., February 11, 2011, prepared by Burns & McDonnell Engineering Company, Inc.
5D	2010 Annual Remediation Monitoring Report, AmeriPride Services, Inc., February 1, 2001, prepared by Burns & McDonnell Engineering Company, Inc.
5E	Phase One Environmental Assessment, for AmeriPride Services, Inc., prepared by Delta Environmental Consultants, June 9, 1998.
5F	Delta letter to Gary Tackett, results of Soil Survey and Addendum to Phased Approached Work Plan, dated January 17, 2000.
5G	Site Report, prepared for AmeriPride Services, by Delta Environmental Consultants, January 24, 2002.
5H	Health Risk Assessment Work Plan, prepared for AmeriPride Services by Delta, May 30, 2003.
5I	June 4, 2004 letter from Delta to Susan Trim, regarding draft Remedial Action Work Plan for Operable Unit 2, June 4, 2004
5J	Remedial Investigation/Feasibility Study Report: Downgradient Groundwater (operable unit 3), prepared for California Regional Quality Control Board by Delta Environmental, January 19, 2006.
5K	Letter from Delta to Gary Tackett, regarding Groundwater Monitoring Well Installation Results Report, September 12, 2007.
5L	Letter from Delta to Jim Burlingame, Quarterly Groundwater Monitoring Report Second Quarter 1998, August 31, 1998.
5M	Letter from Delta to Jim Burlingame, Additional Hydrogeologic Assessment Results and Third Quarter 1998 Groundwater Monitoring Results Report, February 10, 1999.
5N	Letter from Delta to Jim Burlingame, Quality Groundwater Monitoring Report, First Quarter, 1999, May 24, 1999.
5O	Letter from Delta to Jim Burlingame, Quarterly Groundwater Monitoring Report, Second Quarter, 1999, September 21, 1999.
5P	Letter from Delta to Rogean E. Rada, Quarterly Groundwater Monitoring Report, Third Quarter, 1999, November, 1999.

Exhibit	Description
5Q	Letter from Delta Rogean E. Rada, Quarterly Groundwater Monitoring Report, First Quarter, 2000, July 10, 2000.
5R	Letter from Delta Rogean E. Rada, Quarterly Groundwater Monitoring Report, Second Quarter, 2000, October 17, 2000.
5S	Letter from Delta Rogean E. Rada, Quarterly Groundwater Monitoring Report – Second Quarter 2002, August 16, 2002.
5T	December, 1993 – Sacramento Sanitation District of Special Report.
5U	Mediation Monitoring Reporting Program: Groundwater Extraction and Treatment System Operable Unit 2, dated December 13, 2005.
5V	Remedial Investigation/Feasibility Study Report: Down Grading and Groundwater, Operable Unit 3, dated January 19, 2006.
5W	Letter dated September 12, 1997 from Delta to Gary Tackett re Groundwater Monitoring Well Installation Results Report.
5X	Letter from Delta to Jim Burlingame dated April 23, 1998 re Quarterly Groundwater Monitoring Report, First Quarter 1998.
5Y	Letter from Delta to Jim Burlingame dated August 31, 1998 re Quarterly Groundwater Monitoring Report, Second Quarter 1998.
5Z	Letter from Delta to Jim Burlingame dated February 10, 1999 re Additional Hydro-geologic Assessment Results and Third Quarter 1998 Groundwater Monitoring Results Report.
6A	Letter from Delta to Jim Burlingame dated May 24, 1998 re Quarterly Groundwater Monitoring Report, First Quarter 1999.
6B	Letter from Delta to Jim Burlingame dated September 21, 1999 re Quarterly Groundwater Monitoring Report, Second Quarter 1999.
6C	Letter from Delta to Rojean E. Roda dated November 19, 1999 re Quarterly Groundwater Monitoring Report, Third Quarter 1999.
6D	Letter from Delta to Rojean E. Roda dated July 10, 2000 re Quarterly Groundwater Monitoring Report, First Quarter 2000.
6E	Letter from Delta to Rojean E. Roda dated October 17, 2000 re Quarterly Groundwater Monitoring Report, Second Quarter 2000.
6F	Letter from Delta to Rojean R. Roda dated August 16, 2002 re Quarterly Groundwater Monitoring Report, Second Quarter 2002.



Exhibit	Description
6G	Letter from delta to Gary Tackett dated January 17, 2000 re Results of Gore/Sorber Survey and Addendum Faced Approached Work Plan.
6H	Site Investigation Report by Ameripride Services dated January 24, 2002.
6I	Baseline Health Risk Assessment Work Plan by Delta dated May 30, 2003.
6J	Remedial Action Work Plan for Operable Unit 2 dated June 4, 2004.
6K	Soil Monitoring and Reporting Program: Soil Vapor Extraction, Second Quarter 2005 dated July 22, 2005.
6L	Solar Mediation Monitoring and Reporting Program Coil: Soil Vapor Extractions System Third Quarter 2005 dated October 31, 2005.
6M	Industrious Sewer Use Permit Application to SRCSD, dated December 4, 1984.
6N	Mailing Envelope and Environmental News dated December 15, 1990.
6O	Letter from Delta to Rojean E. Rada dated November 22, 2002 re Quarterly Groundwater Monitoring Report, Third Quarter 2002.
6P	Letter from Delta to Rojean E. Rada dated April 14, 2003 re Quarterly Groundwater Monitoring Report, Fourth Quarter, 2002.
6Q	Letter from Delta to Susan Timm dated October 27, 2004 re Supplemental Baseline Health Risk Assessment Report.
6R	Letter from Delta to Susan Timm dated August 18, 2003 re Summary of Monitoring Well Installation, Second Quarter 2003 Groundwater Monitoring.
6S	Quarterly Groundwater Monitoring Report: First Quarter 2005, dated April 29, 2005.
6T	Solar Mediation Monitoring and Reporting Program: Soil Vapor Extraction System First Quarter 2004, dated April 29, 2004
6U	Letter from Delta from Susan Timm dated February 18, 2004 re Summary of Fourth Quarter 2003 Groundwater Monitoring.
6V	Quarterly Groundwater Monitoring and Monitoring and Well Installation Report: First Quarter 2004 dated April 29, 2004.
6W	Quarterly Groundwater Monitoring and Monitoring and Well Installation Report: First Quarter 2004 dated April 29, 2004.

Exhibit	Description
6X	Delta Letter to Rojean E. Rada dated August 16, 2002 re Quarterly Groundwater Monitoring Report, Second Quarter 2002.
6Y	Delta Letter to Susan Timm dated February 18, 2004 re Summary of Fourth Quarter 2003 Groundwater Monitoring.
6Z	Quarterly Groundwater Monitoring and Monitoring Well Installation Report: First Quarter 2004, dated April 29, 2004.
7A	Soil Mediation Monitoring and Reporting Program: Soil Vapor Extraction System Fourth Quarter 2005, dated January 31, 2006.
7B	Compliance Source Test Reports: Soil Vapor Extraction System Fourth Quarter 2005, dated January 31, 2006.
7C	Soil Mediation Monitoring and Reporting Program: Soil Vapor Extraction System Fourth Quarter 2005, dated January 21, 2006.
7D	Compliance Source Test Report: Soil Vapor Extraction System Fourth Quarter 2005, dated January 31, 2006.
7E	Delta Report Concerning Work Done at Site, Water Supply Well Replacement Work Plan Huhtamaki Facility Sacramento, California, dated January 15, 2006.
7F	Draft Remedial Investigation/Feasibility Study Report: Downgrading Groundwater (Operable Unit 3), dated January 19, 2006.
7G	2010 Annual Remediation Monitoring Report (Burns & McDonnell, 1 February 2011)
7H	2007 Annual Remediation Monitoring Report: Operable Units 1 and 2 (Delta, 31 January 2008)
7I	Remediation Monitoring Report: Operable Units 1 and 2, Fourth Quarter 2006 (Delta, 31 January 2007)
7J	July 17, 1986 Letter from James Burlingame to the California State Water Resources Control Board
7K	June 7, 1999 Letter from Delta to Barry Marcus regarding phased approach work plan
7L	August 9, 1999 Letter from Delta to Barry Marcus regarding location map - Gore Sober Modules
7M	September 4, 1998 Daily Field Report

Exhibit	Description
7N	May 28, 1986 Application to remove underground storage tanks
7O	February 8, 1984 Letter from Bernard Berry to Cass Landon of Mission Industries
7P	AmeriPride's adjustment sheet of amounts due from mission acquisition
7Q	AmeriPride's adjustment sheet of amounts due to mission or Petrolane
7R	AmeriPride's adjustment sheet of further amounts due from Petrolane
7S	AmeriPride's adjustment sheet of amounts owed to mission or Petrolane
7T	September 13, 1995 Sacramento Regional County Sanitation District Inspection Report
7U	July 9, 1997 Sacramento Regional County Sanitation District Inspection Report
7V	Application for discharge consideration
7W	November 13, 1996 Letter from Sacramento County to Wayne Burke regarding district file review
7X	June 21, 1996 Sacramento Regional County Sanitation District Inspection Report
7Y	November 14, 1991 Inter branch correspondence from Jim Burlingame regarding permit by rule testing
7Z	May 23, 1988 Memo regarding the 10 commandments of Due Diligence
8A	Valley Industrial Services Policy Manual
8B	August 15, 1983 Inter-office communication from Mark Olson regarding sale issues
8C	April 10, 1994 Letter from Petrolane to Bernard Berry regarding accounts receivable
8D	Petrolane Collection Letters
8E	April 18, 1989 Memo from Bernard Berry regarding environmental audits
8F	January 1, 1995 Memo from Wayne Burke regarding company policy on hazardous waste
8G	County of Sacramento Environmental Management District Notice to Comply



Exhibit	Description
8H	Sacramento Regional County Sanitation District Process Description
8I	February 19, 2001 Letter from Delta to Barry Marcus regarding the phased approach work plan - addendum IV
8J	Baseline Health Risk Assessment Work Plan
8K	May 31, 2002 Letter from Delta to Susan Timm regarding the draft remedial investigation/ feasibility study report
8L	Compliance source test plan: soil vapor extraction system
8M	December 15, 2000 Letter from AmeriPride to Joe Griffith regarding clarification for disposal of drill cutting and trenching
8N	April 25, 2000 Letter from the California Regional Water Quality Control Board regarding proposed cleanup and abatement order
8O	May 6, 2002 Letter from the California Regional Water Quality Control Board regarding proposed cleanup and abatement order
8P	September 13, 2002 Letter from Delta to Susan Timm regarding hydraulic Investigation and Schedule for SVE System Installation
8Q	October 17, 2000 Letter from Delta to Rojean Rada regarding quarterly ground water monitory report
8R	November 17, 2003 Letter from Delta to Susan Timm regarding ground water remedial action plan pilot testing work plan
8S	October 31, 2003 Letter from the California Regional Water Quality Control Board regarding the revised work plan for data gap investigation
8T	October 13, 2003 Letter from Delta to Susan Timm regarding revised work plan for data gap investigation
8U	October 2, 2003 Letter from the California Regional Water Quality Control Board regarding revised work plan for data gap investigation
8V	February 28, 2003 Letter from the California Regional Water Quality Control Board regarding response to technical comments on draft cleanup and abatement order
8W	April 25, 2003 Letter from the California Regional Water Quality Control Board regarding comments on draft remedial action work plan

Exhibit	Description
8X	September 30, 2004 Letter from Delta to the Sacramento Metropolitan Air Quality Management District regarding compliance source test plan
8Y	Quarterly Ground Water Monitoring Second quarter 2004
8Z	February 18, 2004 Letter from Delta to Susan Timm regarding the summary of fourth quarter 2003 ground water monitoring
9A	July 18, 2003 Letter from Delta to Susan Timm regarding the revised work plan for data gap investigation
9B	November 19, 1999 Letter from Delta to Rojean Rada regarding quarterly ground water monitoring report
9C	January 10, 2000 Letter from Delta to Barry Marcus regarding clarification to SCEMD work plan approval letter
9D	February 8, 2002 Letter from Delta to Barry Marcus regarding work plan for additional monitoring wells
9E	June 30, 2002 Letter from the California Regional Water Quality Control Board regarding work plan for data gaps investigation
9F	January 24, 2003 Letter from the California Regional Water Quality Control Board regarding draft monitoring and reporting program
9G	February 10, 2003 Letter from Delta to Susan Timm regarding comments on draft monitoring and reporting program
9H	August 3, 2001 Letter from Delta to Rojean Rada regarding quarterly ground water monitoring report
9I	Soil Remediation Monitoring and Reporting Program: Soil Vapor Extraction System, Second Quarter 2004
9J	Compliance source test plan: soil vapor extraction system, second quarter 2004
9K	Quarterly Ground Water Monitoring and monitoring well installation report: first quarter 2004
9L	Soil Remediation Monitoring and Reporting Program: Soil Vapor Extraction System, First Quarter 2004
9M	Compliance Source Test Report: Soil Vapor Extraction System, First Quarter 2004
9N	Site Investigation Reports

Exhibit	Description
9O	April 14, 2003 Letter from Delta to Rojean Rada regarding quarterly ground water monitoring report
9P	November 22, 2002 Letter from Delta to Rojean Rada regarding quarterly ground water monitoring report
9Q	Compliance Source Test Report: Soil Vapor Extraction System dated 2/5/04
9R	Hazardous Substance Storage Statement
9S	Application for permit to operate underground storage tank P19-180-8
9T	June 30, 1993 Memo from Wayne Burke regarding perchloroethylene Dry Cleaning
9U	April 4, 1997 Memo from Wayne Burke regarding George Butcher
9V	Settlement Agreement between Amerigas Defendants and AmeriPride Services, Inc.
9W	March 18, 2005 Letter from the California Regional Water Quality Control Board regarding remedial investigation/ feasibility study report
9X	April 15, 2005 Letter from Delta to Susan Timm regarding the response to regional board RI/FS comments and proposed schedule
9Y	Gore Sorber Screening Survey
9Z	Industrial Sewer Use Permit Applications
10A	April 14, 2000 Letter from Delta to Barry Marcus regarding the revised gore-sorber screening survey maps
10B	August 12, 2005 Letter from the California Regional Water Quality Control Board regarding response to AmeriPride's letters regarding remediation investigation/feasibility study
10C	Soil Remediation Monitoring and reporting program: soil vapor extraction system, third quarter 2005
10D	December 7, 2001 Letter from the County of Sacramento regarding PCE in groundwater
10E	February 24, 2005 Correspondence from Jim Burlingame to Joe Peter regarding the sanitary sewer

Exhibit	Description
10F	Officers of Petrolane and Valley Industrial Services
10G	Directors of Petrolane and Valley Industrial Services
10H	Field Notes prepared by Craig Johnson
10I	Remedial Investigation/ Feasibility Study Report: Downgradient Ground Water (OU3)
10J	Wastewater discharge permit
10K	March 22, 2004 Notice of violation
10L	March 22, 2004 Administrative complaint
10M	Inspection Report Permit ILN005
10N	Emergency Response Plan
10O	October 30, 2003 Summary of Violations for Hazardous Materials
10P	March 19, 2008 Summary of Violations
10Q	July 7, 1987 Memo regarding perchloroethylene test
10R	Staff Report
10S	February 22, 1993 Letter from Cass Landon to Petrolane
10T	Sacramento List of A/R Agency
10U	October 30, 2002 Letter to the State Water Resource Control Board regarding Cleanup and Abatement Order, Additional Parties
10V	Remedial Investigation/ Feasibility Study
10W	Employee Contracts
10X	September 12, 1994 Letter from Delta to Gary Tackett regarding the groundwater monitoring well installation results report
10Y	Chemical Waste Profile
10Z	Procedure for receiving a plant inspection
11A	TRSA Environmental News



Exhibit	Description
11B	HISA White Paper on Perchloroethylene
11C	Oil Remediation Monitoring and Reporting Program Soil Vapor Extraction System Second Quarter 2005
11D	Remediation Monitoring Report: Operable Units 1 and 2 First Quarter 2007
11E	Preliminary Petition for Writ of Administrative Mandamus
11F	October 30, 2002 Letter to the State Water Resource Control Board regarding Cleanup and Abatement Order, Enforcement Issues
11G	Inspection Report Permit 55
11H	Hazard Communication Training Certification
11I	May 24, 1988 Letter from Winston tires to Valley Industrial Services
11J	Emergency Response Plan
11K	June 19, 1987 Memo from the Institute of Industrial Launderers
11L	Sacramento Regional County Sanitation District Process Description
11M	February 10, 1993 Sludge Sample
11N	December 18, 1992 Memo from Wayne Burke regarding accepting hazardous waste
11O	April 25, 2003, Public Hearing Transcript
11P	Proposed Initial Geoprobe Soil Sampling Point Summaries
11Q	July 8, 1997 Letter from Delta to Barry Marcus regarding soil sampling results
11R	February 10, 1999 Letter from Delta to Jim Burlingame regarding the additional hydrogeologic assessment results and third quarter 1998 ground water monitoring results
11S	December 3, 1999 Letter from the County of Sacramento to Rojean Rada regarding local remediation program
11T	November 29, 1999 Letter from Delta to Barry Marcus regarding the Results of the Gore-Sorber Survey
11U	July 31, 1997 Memo from Delta Erik regarding concrete floor

<b>Exhibit</b>	<b>Description</b>
11V	Memo to Mr. B from Wayne Burke regarding ground water samples
11W	Chart with breakdown of PCE and its daughter products
11X	Phase I Environmental Assessment
11Y	Site Investigation Report
11Z	October 16, 1997 Sacramento Regional Sanitation District Inspection Report
12A	Sludge Sample tested by Ensec on 1/19/88
12B	Instruction Manual for processing shop towels
12C	Petrolane Incorporation Employee Retirement Benefit Plans
12D	VIS Procedures Reports
12E	June 8, 1993 check from Mission Industries for purchase of Valley Industrial Services
12F	November 4, 1981 Interoffice Communication to Ivan Nichols with Valley Industrial Services
12G	March 8, 1999 Letter from County of Sacramento to Jim Burlingame regarding the local remediation program
12H	June 5, 1986 Letter from Hageman-Schank, Inc. regarding the underground storage tanks
12I	July 8, 1997 Letter from Delta to Barry Marcus regarding soil sampling results
12J	AmeriPride's Material Safety Data Sheets
12K	October 31, 1983 inter branch correspondence from Norman Hove regarding accounts receivable agency
12L	November 29, 1983 inter branch correspondence from Norman Hove regarding accounts receivable aging
12M	Ameripride Hazardous Waste Inventory Documents
12N	November 2, 1993 Memo from Delta Oilfield Services, Inc. regarding transport of Valley Industrial
12O	February 13, 1997 Sacramento Regional County Sanitation District Inspection Report



Exhibit	Description
12P	AmeriPride's Uniform Service Process Flow Diagram
12Q	AmeriPride's Amended Cross-Claim against Defendant Petrolane
12R	Complaint for Permanent Injunction and civil penalties against Chromalloy
12S	Notice of entry of final judgment against Chromalloy
12T	July 13, 2000 Letter from Delta to Barry Marcus regarding the phased approach work plan - addendum III
12U	AmeriPride's First Amended Complaint
12V	November 14, 1991 Inter Branch Correspondence from James Burlingame regarding Permit by Rule Testing
12W	December 22, 1992 Memo from James Burlingame regarding washing of solvent laden shop towels
12X	December 7, 1992 Letter from Pellerin Milnor Corporation
12Y	Dry-clean coalition "Reported Leaks, Spills and Discharges at Florida Dry-cleaning Sites"
12Z	Memo regarding Amounts due to Petrolane from Mission
13A	Memo regarding amounts to Mission from Petrolane
13B	Memo regarding amounts assigned to Mission for collection
13C	Drawings of AmeriPride's Plant
13D	November 1, 2000 Field Notes
13E	May 7, 2001 Letter from Panda Industrial to AmeriPride Services, Inc.
13F	June 12, 2000 Letter from Delta to Barry Marcus regarding the phased approach work plan - addendum II
13G	Soil Remediation Monitoring and Reporting Program Soil Vapor Extraction System, First Quarter 2004
13H	Soil Remediation and Reporting Program Soil vapor Extraction System First Quarter 2005
13I	Soil Remediation Monitoring and Reporting Program Soil Vapor Extraction System, Second Quarter 2005

Exhibit	Description
13J	Soil Remediation Monitoring and Reporting Program Soil Vapor Extraction System Third Quarter 2005
13K	Dry Cleaners - A Major Source of PCE in Ground Water
13L	Soil Remediation Monitoring and Reporting Program Soil Vapor Extraction System Fourth Quarter 2005
13M	Remedial Investigation/Feasibility Report Downgradient Water (OU3)
13N	Table 1 to Expert Rebuttal Report of Anne Gates
13O	Table 2 to Expert Rebuttal Report of Anne Gates
13P	Table 3 to Expert Rebuttal Report of Anne Gates
13Q	Table 4 to Expert Rebuttal Report of Anne Gates
13R	Appendix A to Expert Rebuttal Report of Anne Gates
13S	Jim Warner's Expert Report
13T	Jim Warner's Rebuttal Report
13U	Rebuttal Report of Harvey Kreitenberg
13V	Rebuttal Report of Michael Kavanaugh
13W	Environmental Audits
13X	Memo from Bernard Berry to All Plant Managers, with attachments
13Y	Figure 1 to Report of Jim Warner
13Z	Figure 2 to Report of Jim Warner
14A	Figure 3 to Report of Jim Warner
14B	Figure 4 to Report of Jim Warner
14C	Figure 5 to Report of Jim Warner
14D	Figure 6 to Report of Jim Warner
14E	Figure 7 to Report of Jim Warner
14F	Figure 8 to Report of Jim Warner
14G	Figure 9 to Report of Jim Warner
14H	Figure 10 to Report of Jim Warner
14I	Figure 11 to Report of Jim Warner
14J	Figure 12 to Report of Jim Warner
14K	Figure 13 to Report of Jim Warner
14L	Figure 14 to Report of Jim Warner
14M	Figure 15 to Report of Jim Warner
14N	Figure 16 to Report of Jim Warner
14O	Figure 17 to Report of Jim Warner
14P	Figure 18 to Report of Jim Warner
14Q	Figure 19 to Report of Jim Warner
14R	Figure 20 to Report of Jim Warner
14S	Figure 21 to Report of Jim Warner
14T	Figure 22 to Report of Jim Warner
14U	Figure 23 to Report of Jim Warner
14V	Figure 24 to Report of Jim Warner

Exhibit	Description
14W	Figure 25 to Report of Jim Warner
14X	Figure 26 to Report of Jim Warner
14Y	Figure 27 to Report of Jim Warner
14Z	Table 2 to Report of Jim Warner
15A	Table 3 to Report of Jim Warner
15B	Table 4 to Report of Jim Warner
15C	Table 5 to Report of Jim Warner
15D	Table 6 to Report of Jim Warner
15E	Table 7 to Report of Jim Warner
15F	Table 11 to Report of Jim Warner
15G	Table 13 to Report of Jim Warner
15H	Table 15 to Report of Jim Warner
15I	Table 16 to Report of Jim Warner
15J	Figure 4 to Rebuttal Report of Jim Warner
15K	Figure 5 to Rebuttal Report of Jim Warner
15L	Land Disposal Restriction Forms
15M	Site Investigation Photographs
15N	AmeriPride Hazardous Chemical Inventory
15O	AmeriPride Hazmat Chemical Inventory Form
15P	Transportation of Materials from Ameripride by Safety Kleen
15Q	Well Boring Logs

### **Appendix 3**

*AmeriPride Services Inc. v. Valley Industrial Services, Inc.*, Case No.  
00-113 LKK/JFM

List of portions of depositions, answers to interrogatories, and responses to requests for admission that AmeriPride Services Inc. expects to offer at trial.

**Appendix 3**

*AmeriPride Services Inc. v. Valley Industrial Services, Inc.*, Case No. 00-113 LKK/JFM

List of portions of depositions, answers to interrogatories, and responses to requests for admission that AmeriPride Services Inc. expects to offer at trial<sup>1</sup>:

Evidence expected to be offered at trial	Portion
April 25, 2011 Corporate Deposition of TEO pursuant to Federal Rule of Civil Procedure 30(b)(6)	7:16-23; 8:20-10-4; 12:5-13:3; 13:18-13:25; 14:15-15:18; 58:4-69:10; 71:10-25
March 1, 2006 Deposition of Jeffrey J. Thuma, P.G.	8:11-11:14; 76:8-77:19
October 11, 2005 Deposition of Rogerio Delossantos	4:11-5:15; 9:20-10:18; 11:18-12-18; 28:7-29:11; 29:16-30:25; 50:3-8; 51:5-13; 54:14-56:25; 80:12-20
April 29, 2011 Deposition of Michael Kavanaugh, Ph.D., P.E.	32:19-33:2; 34:1-12
April 27, 2011 Deposition of Jim Warner, P.G.	20:4-10; 31:11-32:3; 45:19-46:11; 54:17-55:2; 55:17-56:12; 93:18-94:1; 94:10-95:1; 100:17-101:3; 102:24-103:15; 104:7-18; 110:4-15; 112:18-113:3; 116:12-117:24; 118:15-19; 129:7-22; 135:15-24; 147:7-16; 150:4-8; 152:8-15; 176:6-25; 177:1-4; 177:9-22; 179:16-180:7; 194:6-194:2; 194:12-20; 196:20-197:16; 198:22-199:5
April 28, 2011 Deposition of Ann Wooster Gates, P.E.	69:11-15; 131:6-132:4; 173:22-174:4; 174:9-24
April 28, 2011 Deposition of Harvey Kreitenberg	6:8-7:18; 8:7-22; 13:17-14:12; 37:8-42:7
October 25, 2005 Deposition of Robert J. Smith	5:1-13; 8:3-9:6; 24:21-26:13; 61:1-12; 61:25-62:20
May 3, 2006 Deposition of Robert J. Smith	4:1-12; 11:14-12:1; 14:11-19
August 8, 2005 Deposition of Jesse F. Taylor	4:1-11; 8:4-8; 67:1-68:18; 69:4-10; 75:15-22
August 9, 2005 Deposition of Timothy Flowers	4:1-11; 7:4-8:15; 63:6-64:22; 65:13-66:7
May 3, 2006 Deposition of John D. Dankoff, Jr.	4:1-12; 4:20-23; 5:17-20; 7:9-8:7; 9:9-15; 9:16-11:5; 34:1-14
October 24, 2005 Deposition of Robert Steven Smelosky	5:1-13; 6:14-23; 8:12-25; 9:10-22; 10:5-23; 21:6-13; 21:22-22:4; 23:16-24:5; 25:18-27:15
TEO's Amended Responses to Requests for Admissions (Set One), February 14, 2011	Nos. 91 and 92

<sup>1</sup> The parties have stipulated in Section (14)b. of the parties' Joint Pretrial Statement filed on September 19, 2011 to a deposition designation process which may result in additions to this list.

**Addendum 3**

*AmeriPride Service, Inc. v. Valley Industrial Services, Inc., Case No. 00-113 LKK/JFM*

**List of Discovery TEO expects to offer at trial**

ATTACHMENT "F"



**Addendum 3***AmeriPride Service, Inc. v. Valley Industrial Services, Inc., Case No. 00-113 LKK/JFM***List of Discovery TEO expects to offer at trial<sup>1</sup>**

<b>Evidence expected to be offered at trial</b>	<b>Portion</b>
Plaintiff AmeriPride Services Inc.'s Responses to TEO's First Set of Interrogatories	Interrogatory Response to Request for Admission No. 12, 19, 22, 29, 30, 40 Interrogatory Responses No. 3, 6, 11, 15
Plaintiff Ameripride Services Inc.'s Responses to TEO's Requests for Admissions, Set One	Response to Request for Admission No. 1, 2, 3, 4, 7, 8, 9, 12, 21, 24, 28, 29, 30, 33, 40
Defendant Ameripride Services Inc.'s Responses to Huhtamaki's First Set of Interrogatories	Interrogatory Response No. 8, 15
Plaintiff/Defendant/Counter-Claimant Ameripride Services Inc.'s Responses to Huhtamaki's Second Request for Admissions	Response to Request for Admission No. 5, 6, 27, 30, 33, 37, 51
Plaintiff Ameripride Services Inc.'s Responses to Chromalloy's Interrogatories, Set One	Interrogatory Response No. 7, 18
Plaintiff Ameripride Services Inc.'s Supplemental Responses to Chromalloy's Interrogatories, Set One	Interrogatory Response No. 10, 15
Defendant and Cross-Claimant Ameripride Services Inc.'s Responses to California-American Water Company's Request for Admissions, Set One.	Response to Request for Admission No. 1
Plaintiff Ameripride Services Inc.'s Responses to Petrolane's Interrogatories, Set One	Interrogatory Response No. 32, 34

<sup>1</sup> TEO will be designating deposition transcript excerpts in accordance with the stipulation reached by the parties.